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FINAL
CITY COUNCIL
CITY OF WICHITA
KANSAS

City Council Meeting
09:00 a.m. December 15, 2009

City Council Chambers
455 North Main

OPENING OF REGULAR MEETING

- Call to Order
- Invocation
- Pledge of Allegiance
- Approve the minutes of the regular meeting on December 8, 2009

AWARDS AND PROCLAMATIONS

- Service Award:

Charlie Jauregui

I. PUBLIC AGENDA

NOTICE: No action will be taken relative to items on this agenda other than referral for information. Requests to appear will be placed on a "first-come, first-served" basis. This portion of the meeting is limited to thirty minutes and shall be subject to a limitation of five minutes for each presentation with no extension of time permitted. No speaker shall be allowed to appear more frequently than once every fourth meeting. Members of the public desiring to present matters to the Council on the public agenda must submit a request in writing to the office of the city manager prior to twelve noon on the Tuesday preceding the council meeting. Matter pertaining to personnel, litigation and violations of laws and ordinances are excluded from the agenda. Rules of decorum as provided in this code will be observed.

1. Bizo K. Davis-Bey - Ideas for the old Boys and Girls Club located at 21st Street and Grove.
2. Candace Reed – The Forgotten Four.

COUNCIL BUSINESS

II. UNFINISHED COUNCIL BUSINESS

1. Repair or Removal of Dangerous and Unsafe Structures 1035 North Indiana. (District I)

RECOMMENDED ACTION: Take appropriate action based on the testimony received at the hearing. Any extension of time granted to repair the structure should be conditioned on the following: (1) Taxes and specials are paid as of December 15, 2009, (2) the structure is maintained secure as of December 15, 2009 and is kept secured during renovation or until the property is demolished; and (3) the premise is kept clean and free of trash and debris.

2. Extension of IRB Tax Abatement, The Coleman Company. (District I)
(Deferred December 8, 2009)

RECOMMENDED ACTION: Deny extension of the tax exemption on the 2000, 2001 and 2002 IRB bond-financed property.

III. NEW COUNCIL BUSINESS

1. Revision to Economic Development Incentive Policy.

RECOMMENDED ACTION: Approve the proposed revision to the City's Economic Development Incentive Policy pertaining to the continuation of incentives to non-complying businesses.

2. Approval of Economic Development Incentives, Cox Machine, Inc. (District V)

RECOMMENDED ACTION: Approve the forgivable loan agreement for Cox Machine, Inc, place the home rule ordinance on first reading, and authorize the necessary signatures.

3. Extension of IRB Tax Exemption, Big Dog Motorcycles, Inc. (District I)

RECOMMENDED ACTION: Extend the tax exemption on Big Dog Motorcycles, Inc.'s IRB bond-financed property for a one-year period and review further extension at the end of year 2010.

4. Extension of IRB Tax Exemption, Dean and DeLuca, Inc. (District I)

RECOMMENDED ACTION: Extend the tax exemption on Dean and DeLuca's IRB Bond-financed property for the last one-year period.

5. Reserved Parking Sales Agreement, SMG Wichita/Select-A-Seat. (District I)

RECOMMENDED ACTION: Approve the agreement as to form and authorize the necessary signatures.

6. Amendment to Interlocal Agreement between City of Wichita, Sedgwick County and U.S.D. #259 concerning Neighborhood Revitalization Area Program.

RECOMMENDED ACTION: Approve the amended Interlocal Agreement with Sedgwick County and U.S.D. #259 regarding the Neighborhood Revitalization Area Plan and authorize the necessary signatures.

7. Memorandum of Agreement between the City of Wichita and McConnell Air Force Base for facilitation of a McConnell Open House and Wichita Flight Festival.

RECOMMENDED ACTION: Approve the Memorandum of Understanding (MOU) between the City of Wichita and McConnell Air Force Base (McConnell AFB) with the intent to produce, market, and manage a combination public celebration focusing on the role of the aviation industry and the Air Force presence in the Wichita Community.

8. Operational Agreements for Mid-America All-Indian Center and the Wichita-Sedgwick County Historical Museum.

RECOMMENDED ACTION: Approve the Operational Agreements between the City of Wichita and the Mid-America All-Indian Center and the Wichita-Sedgwick County Historical Museum.

9. Ordinance amending Section 5.88.010 of the Code of the City of Wichita, Kansas, pertaining to the crime of Unlawful Use of Weapons.

RECOMMENDED ACTION: Approve the first reading of the ordinance.

10. Ordinance appropriating the 2010 budget; ratifying the payment of claims against the 2009 budget.

RECOMMENDED ACTION: Approve the passage of the ordinance.

11. Revision to Chapter 6.04, Animal Control and Protection.

RECOMMENDED ACTION: Adopt the ordinance and place it on first reading.

COUNCIL BUSINESS SUBMITTED BY CITY AUTHORITIES

PLANNING AGENDA

NOTICE: Public hearing on planning items is conducted by the MAPC under provisions of State law. Adopted policy is that additional hearing on zoning applications will not be conducted by the City Council unless a statement alleging (1) unfair hearing before the MAPC, or (2) alleging new facts or evidence has been filed with the City Clerk by 5p.m. on the Wednesday preceding this meeting. The Council will determine from the written statement whether to return the matter to the MAPC for rehearing.

IV. NON-CONSENT PLANNING AGENDA

1. CON2009-00032 – Conditional Use for wrecking/salvage yard on property zoned GI Limited Industrial (“GI”); generally located south of 21st Street North and east of Topeka Avenue. (District VI)

RECOMMENDED ACTION: 1) Concur with the findings of the MAPC and approve the Conditional Use request, subject to the recommended conditions (simple majority vote required); OR 2) Deny the Conditional Use request by making alternative findings, and override the MAPC’s recommendation (it requires a two-third majority vote to override the MAPC’s recommendation); OR 3) Return the case to the MAPC for further consideration with a statement specifying the basis for the Council’s failure to approve or deny the application (simple majority vote required).

V. CONSENT PLANNING AGENDA

1. *DER2009-11 City of Wichita Boundary Resolution.

RECOMMENDED ACTION: Approve the Boundary Resolution and authorize the necessary signatures.

HOUSING AGENDA

NOTICE: The City Council is meeting as the governing body of the Housing Authority for consideration and action on the items on this Agenda, pursuant to State law, HUD, and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

VI. NON-CONSENT HOUSING AGENDA

None

VII. CONSENT HOUSING AGENDA

None

AIRPORT AGENDA

NOTICE: The City Council is meeting as the governing body of the Airport Authority for consideration and action on items on this Agenda, pursuant to State law and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

VIII. NON-CONSENT AIRPORT AGENDA

None

IX. CONSENT AIRPORT AGENDA

1. *Covenant of Purpose, Use and Ownership - Aviation Training School - Colonel James Jabara Airport.

RECOMMENDED ACTION: Approve the Covenant of Purpose, Use and Ownership, and authorize the necessary signatures.

COUNCIL AGENDA

X. COUNCIL MEMBER AGENDA

1. Appointment of Municipal Court Judges.

RECOMMENDED ACTION: Appoint incumbent Municipal Court Judges Jennifer Jones, Jennifer Lind-Spahn, Bryce Abbott, William Kehr and Ted Griffith to serve a four-year term of office with the beginning of such term retroactive to the third Tuesday of April 2009 and expiring on the third Tuesday of April 2013, and appoint Judge Jennifer Jones as the administrative judge for a one-year term of office with the beginning of such term retroactive to the third Tuesday of April 2009 and expiring on the third Tuesday of April 2010

XI. COUNCIL MEMBER APPOINTMENTS

1. Board Appointments.

RECOMMENDED ACTION: Approve the Appointments.

XII. CONSENT AGENDA (ITEMS 1 THROUGH 18A)

1. Report of Board of Bids and Contracts dated December 14, 2009.

RECOMMENDED ACTION: Receive and file report; approve Contracts;
authorize necessary signatures.

2. Applications for Licenses:

<u>Renewal</u>	<u>2009</u>	
Norman Massey Jr.	Circle Cinema	2570 South Seneca

RECOMMENDED ACTION: Approve the licenses.

3. Applications for Licenses to Retail Cereal Malt Beverages:

<u>Renewal</u>	<u>2009</u>	<u>(Consumption off Premises)</u>
James Steindler	Gotta Stop Steindler-Investments Inc	5600 West MacArthur Road
<u>Renewal</u>	<u>2009</u>	<u>(Consumption on Premises)</u>
J Larry Fugate	Pizza Hut of Southeast Kansas, Inc*	550 North West Street
J Larry Fugate	Pizza Hut of Southeast Kansas, Inc*	8977 West Central

* General/Restaurant 50% or more gross revenue from sale of food.

RECOMMENDED ACTION: Approve licenses subject to Staff review and approval.

4. Preliminary Estimates:

- a. Preliminary Estimates. (See Attached)

RECOMMENDED ACTION: Receive and file.

5. Statement of Costs:

- a. Statements of Cost. (See Attached)

RECOMMENDED ACTION: Approve and file.

6. Consideration of Street Closures/Uses.

- Intrust Bank Arena Open House. (District I)
- Intrust Bank Arena Brad Paisley Concert. (District I)
- Intrust Bank Arena ROK ICT Concert. (District I)
- Intrust Bank Arena Harlem Globetrotters. (District I)
- Intrust Bank Arena Wichita Thunder vs. Tulsa Oilers. (District I)

RECOMMENDED ACTION: Approve street closure.

7. Agreements/Contracts:

- a. Aquifer Storage and Recovery - Substation Transformer Equipment Contract.
- b. 47th Street South Improvement, between Broadway and Lulu. (District III)
- c. Aquifer Storage and Recovery - Geochemistry Study and Water Quality Pilot Test Services - Supplemental Agreement.

RECOMMENDED ACTION: Approve Agreements/Contracts; authorize the necessary signatures.

8. Change Orders:

- a. Change Order: Old Town Lighting. (District VI)
- b. Aquifer Storage and Recovery Phase II - Surface Water Intake and Treatment Plant Design-Build Contract – Task Order No. 2 Change Order No. 1.

RECOMMENDED ACTION: Approve the Change Orders and authorize the necessary signatures.

9. Property Acquisitions:

- a. Acquisition of 5802 East Wallace for the Gypsum Creek – Pawnee to Woodlawn Flood Control and Stream Restoration Project. (District III)
- b. Partial Acquisition of land in the Northeast Quarter of the Northeast Quarter of Section 16, Township 24 South, Range 2 West of the 6th Principal Meridian for the Integrated Local Water Supply Plan (Harvey County).
- c. Acquisition of a portion of 653 South Bleckley Court for the Dry Creek Basin Project. (District III)
- d. Partial Acquisition of land at 1020 Hertzler Road, Halstead for the Integrated Local Water Supply Plan (Harvey County).

RECOMMENDED ACTION: Approve budgets and Contracts; authorize necessary signatures.

10. Minutes of Advisory Boards/Commissions.

Board of Appeals of Refrigeration, Air-Conditioning, Warm Air Heating and Boiler, October 22, 2009
Deferred Compensation Board, August 20, 2009
Joint Investment Committee, October 8, 2009
Employees' Retirement System, October 21, 2009
Police and Fire Retirement System, October 28, 2009

RECOMMENDED ACTION: Receive and file.

11. Animal Services: ASPCA Grant for Equipment Purchase. (District I)

RECOMMENDED ACTION: Approve the grant application.

12. Payment of Condemnation Award to Acquire Property for the Construction of the 9th Street Drainage Outfall Project. (District VI)

RECOMMENDED ACTION: Authorize payment to the Clerk of the District Court of the 9th Street Drainage Outfall Project appraisers' award in the amount of \$13,100, together with the related appraiser fees of \$3,000 and court costs of \$168 for a total of \$16,268 as per the journal entry, for acquisition of this property

13. Public Restrooms near the East Bank of the Little Arkansas River, south of Central. (District VI)

RECOMMENDED ACTION: Authorize payment for design services to complete construction plans, accept the easement and authorize the necessary signatures.

14. 2010 Insurance Program.

RECOMMENDED ACTION: Receive, file and ratify the 2010 Insurance Program, subject to minor modifications and verification of coverage details.

15. Equus Beds Funding - Memorandum of Understanding with the Kansas Water office.

RECOMMENDED ACTION: Approve Addendum No. 1 with the Kansas Water Office and authorize the necessary signatures.

16. Pressure and Chlorine Booster Station - Rural Water District No. 1. (District II)

RECOMMENDED ACTION: Authorize staff to proceed with the design and construction of the pressure and chlorine booster station and authorize the necessary signatures.

17. Budget Adjustment, Fleet Fund.

RECOMMENDED ACTION: Approve the budget transfers.

18. Second Reading Ordinances: (First Read December 8, 2009)

- a. List of Second Reading Ordinances. (See Attached)

RECOMMENDED ACTION: Adopt the Ordinances.

Adjournment

Workshop to follow

City of Wichita
City Council Meeting
December 15, 2009

TO: Mayor and City Council

SUBJECT: Repair or Removal of Dangerous & Unsafe Structures
1035 N. Indiana (District I)

INITIATED BY: Office of Central Inspection

AGENDA: Unfinished Business

Recommendations: Take appropriate action based on testimony received during the review hearing.

Background: On October 13, 2009, the City Council held a public hearing to consider dangerous building condemnation action on the vacant, single family house at 1035 N. Indiana. The current property owner, Michael Rolle, and the potential buyer of the property, Lou Confessori (representing Mennonite Housing Services), spoke in regard to the possible sale and redevelopment of this property.

Mennonite Housing Services has been working with Mr. Rolle since April 2009 to purchase the property. In August 2009, an "Option to Purchase" agreement was executed between Mennonite Housing Services and Mr. Rolle. However, final sale of the property has been delayed due to title issues associated with a prior owner's bankruptcy (the property owner just prior to Mr. Rolle). After reviewing the condemnation case and hearing testimony on October 13, 2009, the City Council approved a motion by Council Member Williams to defer City Council action for 60 days to provide additional time to resolve property title issues and transfer property ownership to Mennonite Housing Services.

Analysis: Per recent conversations with the current property owner, Mr. Rolle, and Lou Confessori of Mennonite Housing Services, Mr. Rolle is still working with an attorney to obtain a clear property title (in order to sell the property to Mennonite Housing Services). Mr. Rolle is hopeful that the issue will be resolved sometime in December 2009. Mr. Confessori indicated it is still the intention of Mennonite Housing Services to have the property demolished immediately after obtaining clear title.

Staff inspected the property on November 25, 2009; no repairs had been made, and the house had several unsecured window openings. There was also some scattered trash, debris and tree waste on the property. However, a sanitary sewer permit to seal the sanitary sewer main connection for the existing house (in preparation for demolition of the existing house) was issued on November 23, 2009 to a wrecking contractor hired by Mennonite Housing Services.

The taxes are current. However, there is a 2009 special assessment for weed cutting and lot cleanup in the amount of \$2,327.72, including interest.

Financial Considerations: Structures condemned as dangerous buildings are demolished with funds from the Office of Central Inspection Special Revenue Fund contractual services budget, as approved annually by the City Council. This budget is supplemented by an annual allocation of federal Community Development Block Grant funds for demolition of structures located within the designated Neighborhood Reinvestment Area. Expenditures for dangerous building condemnation and demolition activities are tracked to ensure that City Council Resolution No. R-95-560, which limits OCI expenditures for non-revenue producing condemnation and housing code enforcement activities to 20% of OCI's total annual budgeted Special Revenue Fund expenditures, is followed. Owners of condemned structures demolished by the City are billed for the contractual costs of demolition, plus an additional \$500

administrative fee. If the property owner fails to pay, these charges are recorded as a special property tax assessment against the property, which may be collected upon subsequent sale or transfer of the property.

Goal Impact: On January 24, 2006 the City Council adopted five (5) goals for the City of Wichita. These include: Provide a Safe and Secure Community, Promote Economic Vitality and Affordable Living, Ensure Efficient Infrastructure, Enhance Quality of Life, and Support a Dynamic Core Area & Vibrant Neighborhoods. This agenda item impacts the goal indicator to Support a Dynamic Core Area and Vibrant Neighborhoods: Dangerous building condemnation actions, including demolitions, remove blighting and unsafe buildings that are detrimental to Wichita neighborhoods.

Legal Considerations: The property owner and Mennonite Housing Services have been informed of the date and time of this dangerous building condemnation review hearing.

Recommendations/Actions: It is recommended that the City Council take appropriate action based on the testimony received at the hearing. Any extension of time granted to repair the structure should be conditioned on the following: (1) Taxes and specials are paid as of December 15, 2009, (2) the structure is maintained secure as of December 15, 2009 and is kept secured during renovation or until the property is demolished; and (3) the premise is kept clean and free of trash and debris.

If any of the above conditions are not met, the Office of Central Inspection will proceed with demolition action and also instruct the City Clerk to have the resolution published once in the official city paper and advise the owners of these findings.

Attachments: None

**City of Wichita
City Council Meeting
December 15, 2009**

TO: Mayor and City Council

SUBJECT: Extension of IRB Tax Abatement (The Coleman Company) (District I)

INITIATED BY: Office of Urban Development

AGENDA: Unfinished Business

Recommendation: Deny the extension of property tax exemption.

Background: Since 1993, the City of Wichita has issued industrial revenue bonds (IRBs) for the Coleman Company each year except in 2003, pursuant to letters of intent to issue IRBs. IRBs have been used to finance the construction of a new corporate headquarters, the expansion of existing manufacturing facilities and the purchase of additional machinery and equipment for manufacturing facilities in Wichita and Maize. Since 1999, property financed with IRBs has been exempted from property taxes for terms of five years plus a second five years subject to City Council approval based on meeting job creation goals.

Beginning in 2005, the City Council began reviewing prior Coleman bond issues for the second five-year period of abatement. Since Coleman has not achieved the commitments it originally made in terms of job creation, the City Council has approved one-year extensions on the property financed in 1999, 2000, 2001 and 2002. This year's review will consider a one-year extension of the tax exemptions on property financed with IRBs in 2000, 2001 and 2002 (property financed in 1999 is not eligible for abatement).

The City-County Economic Development Incentive Policy adopted in 2006, allows for companies to qualify for economic development incentives, including property tax abatements, based on capital investment only, without necessarily requiring job creation.

On December 8, 2009, the City Council approved the issuance of IRBs in a total amount of \$5,300,000 for 2009 improvements, but deferred action for one week on consideration of the extension of property tax abatements for prior year IRBs.

Analysis: As a condition of the bond issues and tax exemption approved from 1999 to 2006, Coleman committed to construction of a new corporate headquarters, expansion of existing manufacturing facilities, and purchase of machinery and equipment, with a total investment amount of \$33,000,000 and creation of 200 new jobs within five years of the first bond issue.

Coleman's project commitments and outcomes:

<u>2000, 2001 & 2002 Commitment</u>	<u>October 31, 2009 Status</u>
Construct new building addition	Completed new building additions totaling approximately \$23,000,000
Purchase Manufacturing Equipment	Purchased equipment worth over \$15,000,000
Create 200 new jobs in five years	130 jobs were created; then reduction of 217

Coleman has fallen short of its jobs commitment and has significantly downsized its workforce. Starting with 1,137 employees at the time the IRB letter of intent was approved in 1999, Coleman added 130 jobs, reaching peak employment of 1,267 employees in 2002. Employment at Coleman as of May 2009 was 910, a reduction of 271 jobs from the 1999 level. Recently, Coleman announced a further reduction of nearly 100 jobs due to transferring distribution operations to Gardner, Kansas. While Coleman's employment levels have fallen below the 1999 levels, the average wages have continued to increase *and actual annual payroll has increased by 12% over 1999 levels, from \$38 million to \$43 million.*

Coleman has undergone an extensive corporate restructuring, following acquisition of Coleman's parent company by Jarden Corporation. The corporate headquarters of the Coleman Company was moved back to Wichita from Chicago. Economic conditions and technological advances have led Coleman to eliminate unfilled and vacated positions and they do not anticipate significant increases in the near future. Coleman continues to maintain employment levels that are relatively consistent over the last 5 years.

Staff has developed a proposed policy framework to evaluate extending economic development incentives for companies that are not in compliance, based on performance measures. The performance measures to be evaluated include whether the company's peak job creation numbers met the requirements at some time during the review period, whether capital investments were made as committed, and whether the required return on investment threshold of 1.3 to one was actually met.

The proposed framework also uses WSU's annual Current Conditions Index as a threshold indicator of how the general economic conditions impact a company's ability to perform. If a significant decrease in the Index has occurred from the time the incentives were approved to the time of the review, the company may qualify for an extension of incentives if a majority of the above-mentioned performance measures were met. For the purpose of this policy framework, a significant index decline would be a five percent decrease from one year to the next. Without a significant decline in the Current Conditions Index, all of the above-mentioned performance measures would have to be met for staff to recommend an extension of the incentives.

Coleman has met only one of the three performance measures. As shown above, they met the capital investment target, but the job creation has never reached 200; and as shown below, the actual return on investment is well below the threshold of 1.3 to one due to the extent of employment reductions. Since 2000, the WSU Current Conditions Index has decreased 15% from 104 to 88.

Financial Considerations: The cost/benefit analysis performed by Wichita State University's Center for Economic Development and Business Research based on actual job creation, *payroll* and capital investments reflects cost/benefit ratios as follows:

City of Wichita	0.70 1.23 to one
General Fund	0.76 1.18 to one
Debt Service	0.59 1.31 to one
Sedgwick County	0.83 1.12 to one
USD 259	1.00 to one
State of Kansas	-6.35 4.33 to one

Goal Impact: Economic Vitality and Affordable Living. Granting ad valorem property tax exemptions will help Coleman *businesses* remain competitive and stimulate economic growth for the City of Wichita and Sedgwick County.

Legal Considerations: Under the IRB lease, the City Council reserves the right to terminate the exemption at the end of the first five-year period. Each year, the City must re-certify to the County Clerk that the exempted property is still eligible in order to continue the property tax exemption for that year. This allows the City Council to review non-complying companies each year and revisit the decision to extend the exemption.

Recommendations/Actions: It is recommended that the City Council deny extension of the tax exemption on the 2000, 2001 and 2002 IRB bond-financed property.

Attachments:

City of Wichita
City Council Meeting
December 15, 2009

TO: Mayor and City Council

SUBJECT: Revision to Economic Development Incentive Policy

INITIATED BY: Urban Development

AGENDA: New Business

Recommendation: Approve the policy revisions.

Background: On November 14, 2004, the City Council approved a new Economic Development Incentive Policy that had been developed in cooperation with Sedgwick County and the Greater Wichita Economic Development Coalition. The same policy was also approved by the Sedgwick County Board of County Commissioners. The Incentive Policy provides a framework for offering incentives to businesses that expand in or relocate to Wichita and Sedgwick County, based on job creation and/or capital investment in our local economy, and a measured return-on-investment of at least 1.3 to one. An array of business sectors are identified as being eligible, based generally on the extent to which they create new wealth in the local economy by producing goods or services that are consumed outside of the local area.

The Incentive Policy also addresses the issue of compliance on the part of companies receiving incentives with their commitments to create jobs or make capital investments, or other requirements. The Policy allows the City Council to discontinue any ongoing incentives and to require the repayment of previously received incentives, pursuant to incentive agreements. However, the Incentive Policy does not provide a framework for guidance in determining when incentives should be continued, in spite of a failure by the recipient to comply with conditions on which the incentives were granted. The proposed revision to the Economic Development Incentive Policy is intended to rectify this deficiency

Analysis: The most commonly granted economic development incentives are property tax exemptions, either through the issuance of industrial revenue bonds (IRBs) or approval of economic development exemptions (EDX). The Economic Development Incentive Policy provides a matrix for determining the percentage amount of tax exemption a company can be granted, based on job creation and/or capital investment. It also prescribes an initial five-year term for the exemption, and a possible second five years to be approved by the City Council following a compliance review. The prior incentive policy also had a similar “5+5” year review and approval feature, but the matrix in the former policy was structured in a way that required job creation in all cases. The new Incentive Policy recognizes that larger, more mature companies make large capital investments without adding jobs, but still contribute significantly to the stability and growth of the local economy. The matrix therefore allows incentives without job creation, with an investment of at least \$33,500,000 needed to achieve a 100% exemption.

Starting in 2005, the five-year reviews began to identify a number of companies that did not reach their job creation goals, for the most part due to the economic downturn that followed the terrorist attacks of September 11, 2001. At that time the Council adopted the practice of granting one-year extensions to non-complying companies at the end of each year, with another review and one-year extension at the end of the next year. This practice has not been codified into policy, and it lacks a consistent framework upon which to base a decision on continuing the incentives, or not.

Staff has developed a proposed policy framework to evaluate extending economic development incentives for companies that are not in compliance, based on performance measures. The performance measures to be evaluated include whether the company's peak job creation numbers met the requirements at some time during the review period, whether capital investments were made as committed, and whether the required return on investment threshold of 1.3 to one was actually met.

The proposed framework also uses WSU's annual Current Conditions Index as a threshold indicator of how the general economic conditions impact a company's ability to perform. If a significant decrease in the Index has occurred from the time the incentives were approved to the time of the review, the company may qualify for an extension of incentives if a majority of the above-mentioned performance measures were met. For the purpose of this policy framework, a significant index decline would be a five percent decrease from one year to the next. Without a significant decline in the Current Conditions Index, all of the above-mentioned performance measures would have to be met for staff to recommend an extension of the incentives.

The WSU Current Conditions Index is designed to give an indication of the present condition of the Wichita metropolitan area economy. The WSU Current Conditions Index is composed of six monthly indicators including:

- § Number of monthly home sales
- § Hotel occupancy rate
- § Number of outbound airline passengers
- § Volume of outbound airfreight
- § Number of wage and salary employed
- § Civilian unemployment rate

The Current Conditions Index is expressed as a number, where an Index greater than 100 shows strong, healthy economic conditions and less than 100 indicates a weaker, distressed local economy. As a point of reference, the decrease in the Current Conditions Index from 2008 to 2009 is 20.8%, from 111 to 88.

Financial Considerations: A consistent policy framework for enforcing compliance with incentive conditions will enhance the City's real return-on-investment through the use of incentives.

Goal Impact: Economic Vitality and Affordable Living. An effective economic development incentive policy increases the competitiveness of the City to retain existing businesses, attract new businesses and grow the economy.

Legal Considerations: The proposed revision to the Economic Development Incentive Policy will initially exist as a supplement to the adopted Policy, applicable to City actions relative to the continuation of incentives to non-complying businesses, until such time as the City-County Incentive Policy is formally amended.

Recommendations/Actions: It is recommended that the City Council approve the proposed revision to the City's Economic Development Incentive Policy pertaining to the continuation of incentives to non-complying businesses.

Attachments:

**City of Wichita
City Council Meeting
December 15, 2009**

TO: Mayor and City Council

SUBJECT: Approval of Economic Development Incentives (Cox Machine, Inc.) (District V)

INITIATED BY: Urban Development Office

AGENDA: New Business

Recommendation: Approve the Forgivable Loan Agreement.

Background: Cox Machine Inc., located at 5338 W. 21st N. in northwest Wichita, was locally formed in 1954. Since its establishment, Cox Machine has achieved consistent growth in its manufacturing of precision parts for the aerospace industry. Since 1998, the City of Wichita has assisted Cox Machine with five expansions by approval of Economic Development Tax Exemptions (EDX) on the building additions and newly acquired manufacturing equipment in conjunction with the expansion projects.

Cox Machine has recently been successful in landing major production contracts with aerospace clients located in Tulsa and Dallas which require the addition of manufacturing capacity. While considering possible expansion in one of these locations, Cox Machine worked with the Greater Wichita Economic Development Coalition (GWEDC) to keep the expansion in Wichita. Working with the City, Sedgwick County and the State of Kansas, the GWEDC developed an incentive package, subject to approval by governing bodies, that includes forgivable loans and EDX exemptions.

Analysis: Cox Machine is engaged in the manufacture of high quality small parts for the aerospace industry. Cox Machine has a CDC milling department that uses CAD programs, which optimize programming capabilities. Cox Machine also has a grinding department that offers thread grinding and includes centerless as well as cylindrical grinding. Other operations offered by Cox Machine is gun drilling, sheet metal fabrication, small assembly operations, kitting and engineering. Customers include Boeing, Bombardier, Cessna, Hawker Beechcraft, Lockheed Martin, Northrop Grumman, and the U.S. Government among others. Cox Machine exports virtually all of its production outside of the State of Kansas.

The current expansion project includes construction of a 30,000 s.f. building addition with a cost of \$1,400,000, and purchase of additional machinery and equipment at \$6,000,000. Cox Machine currently has 84 employees and plans to add an additional 50 employees over the next five years at an average hourly salary of \$18.00.

The City of Wichita and Sedgwick County have partnered to offer economic development assistance to the Cox Machine. The City and Sedgwick County will provide \$25,000 each in forgivable loan funds to offset construction costs and costs of acquiring machinery and equipment, subject to governing body approval. Cox Machine has agreed to add 50 new jobs to the 84 existing Wichita positions, and as a condition for forgiveness of the loan, will increase that employment to a minimum of 126 positions within the next five years, with an average salary of \$37,440 per year. In addition to the forgivable loan, the City of Wichita will process an application for an Economic Development Tax Exemption (EDX) on the new building addition when construction is completed.

Policy consideration: In 2008, the City Council granted Cox Machine an EDX property exemption for an 2005 expansion, in which the company committed to creating 25 new jobs within 5 years, starting from an employment base of 73. In the three years following the expansion, Cox Machine far exceeded the level of 98 jobs it had committed to reach, hitting an employment level of 161 jobs in July 2008. However, starting with the Boeing strike later that year and going through the severe downturn in the aerospace industry, the company has failed to maintain its employment level above 98 jobs and has slipped to the current level of 84 jobs. The average employment level at Cox Machine since 2005 has been 108 jobs. The company is willing to use 84 (but not 98) as the employment base to which it will commit to adding 50 new jobs.

Financial Considerations: The forgivable loan proceeds in the amount of \$25,000 will be provided to Cox Machine from funds budgeted in the Economic Development Fund for economic development incentives in 2009.

Wichita State University Center for Economic Development and Business Research calculated a cost-benefit analysis indicating benefit-to-cost ratios, which are as follow:

City of Wichita	3.93 to one
Sedgwick County	2.98 to one
USD 266	2.17 to one
State of Kansas	12.32 to one

Goal Impact: Economic Vitality and Affordable Living. Providing economic development incentives to Cox Machine creates critical manufacturing jobs and investment and encourages future growth of the economy.

Legal Considerations: The City Attorney's Office has approved the documents as to form. The City's exercise of home rule authority is necessary to provide the cash incentive; this requires the adoption of an ordinance for approval.

Recommendation/Actions: It is recommended that the City Council approve the forgivable loan agreement for Cox Machine, Inc., place the home rule ordinance on first reading and authorize the necessary signatures.

Attachment(s): Forgivable Loan Agreement and Promissory Note, Ordinance

FORGIVABLE LOAN AGREEMENT and PROMISSORY NOTE

This Loan Agreement and Promissory Note (the "Agreement"), effective this ____ day of September, 2009, is entered into between the following parties:

Lender: City of Wichita, Kansas ("Lender")
455 N. Main
Wichita, Kansas 67202
Contact Person/Title: Allen Bell, Urban Development Director
Phone: 316-268-4524 FAX: 316-858-7890

Borrower: Cox Machine, Inc.
5338 West 21st Street North, Suite 100
Wichita, KS 67205
Contact Person/Title: Brenna Cox, Chief Operating Officer
Phone: (316) 943-1342 FAX: (316) 943-2848
FEIN: 48-0928813

WHEREAS, it has been determined by the Lender that an economic emergency or unique opportunity exists which warrants funding to secure economic benefits or avoid or remedy economic losses; and

WHEREAS, the Borrower has specified that this funding will be used to finance the construction and equipping of an expansion to the facility located at 5338 West 21st Street in Wichita, Kansas; and

WHEREAS, the Lender has authorized an expenditure of up to \$25,000 for the purpose of making a loan to the Borrower under such terms and conditions as may be prescribed by the Lender.

NOW THEREFORE, in consideration of the mutual promises, covenants and agreements, the parties agree as follows:

1) **Loan Amount and Terms**: Subject to the terms and conditions of the Agreement, the Lender hereby agrees to provide the Borrower with the principal sum of up to \$25,000 for a sixty (60) month period. Interest will accrue from the date of disbursement at the rate of zero percent (0.0%) per annum on the unpaid balance. Should a default occur, repayment of all principal and interest will be made immediately in accordance with the provisions shown below. The Borrower shall have the right to prepay any part or all of the unpaid principal and interest balance at any time without penalty. This loan is not transferable.

2) **Forgiveness of Debt**: The Borrower promises to create and maintain minimum employment levels at the Wichita, Kansas facility by September 30, 2014 as shown in the following schedule:

Year	New Employment	Total Wages (cumulative)
2010	10	\$ 374,400
2011	10	\$ 748,800
2012	10	\$ 1,123,200
2013	10	\$ 1,497,600
2014	10	\$ 1,872,000

Job figures reflect full-time equivalent (FTE) positions only. One FTE is equal to 2080 hours earned per year, including vacation. Average salary of all positions shall be at least \$37,440/year (\$18 per hour average).

The first anniversary date for meeting the first year's job creation commitment shall be September 30, 2010. On this first anniversary and at each scheduled anniversary thereafter, the outstanding principal balance will be divided by the number of remaining anniversary dates. By September 30, 2014, the number of new FTE positions created and maintained will be no less than 50. The base figure for employment will be 84 FTEs. The resultant amount and all interest accrued since the previous anniversary date will be forgiven if the scheduled job and wage commitments have been met. However, in the

event the Borrower leaves Wichita, Kansas during the term of this agreement, any principal and interest which has been forgiven will be repaid in accordance with item (16) below.

In the event of a technical default under this section, the Borrower has the right of appeal to Lender, if compelling evidence can be presented demonstrating that the default is the result of dramatic, unforeseen changes in economic or market conditions. In the event of an appeal, the Lender will have the sole discretion to enforce the provisions as set forth in item (16) below.

3) **Collateral**: None is required under this Agreement.

4) **Mortgage/Security Agreement**: Not applicable.

5) **Insurance**: The Borrower agrees to provide and maintain at its own expense casualty and hazard insurance covering loss by fire or wind with extended coverage insuring all of the real estate, buildings, fixtures and improvements and all business machinery, equipment, furnishings and furniture at its Wichita, Kansas facility. Evidence of such coverage will be provided to the Lender upon written request. The total amount of the insurance policy shall be sufficient to pay all indebtedness to lien holders and other parties with an interest in this property, and pay the Lender the entire outstanding principal balance and accrued interest. In the event of such loss, the Borrower agrees to repay the Lender as detailed in section 16(A)(ii) below, subject to item (6).

6) **Force Majeure**: In the event that operations at the worksite are impaired or suspended due to uncontrollable forces of nature or other forces outside Borrower's control, the Borrower will be given a reasonable period of time, as determined in the sole discretion of the Lender, in which to reestablish any lost jobs. The term of this agreement will be extended by the length of this period, and no contractual penalty will be imposed on the company during this period.

7) **Release of Mortgage/Security Agreement**: Not applicable.

8) **Life Insurance**: Not applicable.

9) **Use of Funds**: The monies from this loan shall be used by the Borrower to pay for costs directly related to construction and equipping of the expansion at the Borrower's worksite in Wichita, Kansas. Lender shall disburse funds to the Borrower upon presentation of written proof that the aforementioned costs have been incurred by the Borrower.

Any machinery and equipment obtained using these loan funds will be promptly identified to the Lender, including narrative description and serial number, and will remain in the Wichita, Kansas facility for the duration of this agreement. The Lender or its representative shall be afforded the right of inspection of such machinery and equipment throughout the term of this agreement.

10) **Services Provided to Borrower**: The Lender is not obligated to provide any services to the Borrower other than those specified in the Agreement.

11) **Related Contracts**: The Borrower shall provide, upon written request, copies of all contracts entered into by the Borrower for activities covered by the loan monies.

12) **Period of Performance**: The Borrower may be reimbursed with loan funds for expenses incurred prior to the date of this Agreement, if they were made in connection with activities defined in item (9) above.

Activities will terminate when all conditions of the Agreement have been met within any specified time frames, or by mutual consent of all parties to the Agreement, or when a default situation arises, unless the Lender chooses not to terminate the Agreement.

13) **Financial Management**: Borrower shall keep accounting records in conformance with generally accepted accounting principles, and make such records and all related reports, files, documents and other papers pertaining to the funds provided under this Agreement available for audits, examinations and monitoring if requested by Lender; such records will be retained for a period of three (3) years after termination of the loan period or repayment of the debt in full. The accounting system used by the Borrower shall clearly establish records of budgets and expenditures for the activities funded with the loan monies.

14) **Monitoring and Reporting:** A random audit, or audits, may be conducted by the Lender, or a designated representative of the Lender, to assure accountability of loan expenditures and examine the status of any machinery and equipment acquired with this loan funding.

The Borrower will provide to Lender, on an annual basis and for the term of this agreement, a report for the Borrower's Wichita, Kansas facility which lists the number of full-time equivalent employees, the total payroll as defined in item (2) of this Agreement, and a record of capital investment for the most recent report period and accumulated since the beginning of the report periods. Each report will be submitted within 60 days of the anniversary date of this Agreement.

15) **Waivers:** The Borrower hereby waives presentment, demand of payment, protest, and any and all other notices and demands whatsoever. No waiver of any payment or other right under this Agreement shall operate as a waiver of any other payment or right.

16) **Default:** This Agreement shall be considered in default if:

- (A) Upon any default or failure to properly perform under any clause in this Agreement (or the provisions of any security agreement(s) or mortgage documents which secure this Agreement).
 - (i) If, on the scheduled anniversary, employment levels are below the minimums specified in item (2) of this Agreement, the following repayment is required within thirty (30) days:
 - a) the outstanding principal balance will be divided by the number of remaining anniversary dates, to produce the principal amount due, plus
 - b) interest accrued since the previously scheduled anniversary date.
 - (ii) If the Borrower ceases to operate in Wichita, Kansas during the term of this Agreement, the following repayment is required:
 - a) the entire outstanding principal amount is immediately due and payable, plus
 - b) any principal and interest previously forgiven as specified in item (2) above, plus
 - c) interest penalties equal to a twelve percent (12%) compounded annual rate calculated for a 5 year period against the highest outstanding principal amount over the term of the loan.
 - (iii) Upon audit, any loan funds shown to have been used for other than the intended purposes shall be repaid with interest to Lender by Borrower. Such unintended purposes would include, but not be limited to, the acquisition of machinery and equipment which is not used at the Wichita, Kansas facility throughout the term of this loan. The amount to be repaid shall be such principal plus twenty-five percent (25%) compounding interest accrued from the date of the initial draw-down against this loan.
 - (iv) If the Borrower otherwise defaults in any manner on the obligations set forth in this Agreement, the following repayment is required:
 - a) any principal balance outstanding on the loan is due and payable; and
 - b) interest penalties equal to a twelve percent (12%) compounded annual rate calculated against the principal balance for the period during which it has been outstanding.
- (B) Upon any occurrence under this Agreement or security agreements or mortgage documents by which this loan may or shall become due and payable.
- (C) At any time that the Lender determines in good faith that the prospect of any payment required by this note is impaired.

In the event of continued default following a fifteen (15) day written notice of default, the Lender may, at its option, declare all unpaid indebtedness evidenced by this Agreement and any modifications thereof, immediately due and payable, without further notice, regardless of date of maturity. The Lender's failure to exercise this option when available at any point in time shall in no way invalidate its right to exercise the option in future default situations. Should it become necessary to collect the monetary obligations of this Agreement through an attorney, the Borrower agrees to pay all costs of collecting these monies, including reasonable attorneys' fees to the extent permitted by law, whether collected by suit, foreclosure, or otherwise.

17) **Indemnification:** The Borrower shall indemnify, defend, and hold harmless the Lender and its respective officers and employees from any liabilities, claims, suits, judgments, and damages arising as a result of the performance of the obligations under this Agreement by the Borrower or any party in a relationship with the Borrower which is a result of this Agreement. The liability of the Borrower under this Agreement shall continue after the termination of the Agreement.

with respect to any liabilities, claims, suits, judgments and damages resulting from acts occurring prior to the termination of this Agreement.

18) **Amendments**: Changes to this Agreement will not be effective or binding unless in writing and signed by both parties to the Agreement.

19) **Compliance with the Law**: The Borrower agrees to operate in Sedgwick County, Kansas in full compliance with applicable federal, state and local laws without limitation.

20) **Authorization to Contract**: Before or at the time of execution of the Agreement, the Borrower must be able to provide evidence that it is duly incorporated, in good standing in the state of its incorporation, authorized to do business in the State of Kansas, and authorized to borrow money; and evidence shall be provided that the person executing the Agreement and any supporting documents is authorized to act on behalf of the Borrower in such a transaction.

21) **Termination of Agreement**: Lender may terminate the loan, in whole or in part, if the Borrower has failed to comply with the conditions of the Agreement and such failure has resulted in a "default" as set forth in Section 16 of this Agreement. The Borrower will receive written notice and the reasons for termination.

22) **Divisibility**: The invalidity of any one or more phrases, sentences, clauses, or section contained in this Agreement shall not affect the remaining portions of this Agreement, or any part thereof. Further, various headings included in this Agreement exist purely as an aid to locate particular wording, and do not in and of themselves in any way affect the substance of this Agreement.

23) **Complete Document**: The parties agree this Agreement is a complete document in which all obligations have been reduced to writing, and there are no understandings, agreements, conventions or covenants not included herein.

24) **Assignment**: The parties further agree that this Agreement may not be assigned by the Borrower without prior written approval by the Lender other than to an affiliate or in connection with a sale of all or substantially all of the assets of the Borrower (by merger, reorganization or otherwise).

25) **Binding Effect**: The provisions of this Agreement shall both bind and benefit the Borrower's successors, assigns, guarantors, endorsers, and any other person or entity now or hereafter liable hereon.

26) **Notices**: Notifications required pursuant to this contract shall be made in writing and mailed to the addresses shown below. Such notification shall be deemed complete upon mailing.

Borrower: Cox Machine, Inc.
Attn: Brenna Davis
5338 W 21st Street North, Suite 100
Wichita, KS 67205

City: Office of Urban Development
Attn: Allen Bell, Urban Development Director
455 N. Main, 13th Floor
Wichita, KS 67202

Department of Law
Attn: Gary Rebenstorf, City Attorney
455 N. Main, 13th Floor
Wichita, KS 67202

27) **Cash Basis and Budget Laws**: The right of Lender to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that Lender shall at all times stay in conformity with

such laws, and as a condition of this Agreement Lender reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.

28). **Equal Opportunity and Affirmative Action.** In carrying out this contract, Borrower shall deny none of the benefits or services of the program to any eligible participant pursuant to K.S.A. 44-1001 et seq.

A. Borrower shall observe the provisions of the Kansas act against discrimination and shall not discriminate against any person in the performance of work under this contract because of race, religion, color, sex, disability, national origin, or ancestry.

B. In all solicitations or advertisements for employees, Borrower shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Kansas Human Rights Commission.

C. If Borrower fails to comply with the provisions of K.S.A. 44-1031, requiring reports to be submitted to the Kansas Human Rights Commission when requested by that Commission, Borrower shall be deemed to have breached this contract and it may be canceled, terminated or suspended, in whole or in part, by Lender.

D. If Borrower is found guilty of a violation of the Kansas act against discrimination under a decision or order of the Kansas Human Rights Commission which has become final, Borrower shall be deemed to have breached this contract and it may be canceled, terminated or suspended, in whole or in part by Lender.

E. Borrower shall include the provisions of paragraphs A through D inclusively of this section in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

IN WITNESS WHEREOF, the parties have signed their names below.

LENDER:

BORROWER:

CITY OF WICHITA, KANSAS

COX MACHINE, INC.

Carl Brewer, Mayor

Brenna Davis, Chief Operating Officer

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary Rebenstorf
City Attorney

(PUBLISHED IN THE WICHITA EAGLE ON _____, 2009)

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF WICHITA, KANSAS, PRESCRIBING THE FORM AND AUTHORIZING THE EXECUTION OF A FORGIVABLE LOAN AGREEMENT AND PROMISSORY NOTE BY AND BETWEEN COX MACHINE, INC. AND THE CITY OF WICHITA, KANSAS.

WHEREAS, the City of Wichita, Kansas (the “City”) is authorized by Article 12, Section 5, of the Kansas Constitution to determine, by ordinance, its local affairs and government; and,

WHEREAS, the Governing Body of the City finds and determines that it is desirable to act in cooperation with Sedgwick County and the State of Kansas in order to promote, stimulate and develop the general economic welfare and prosperity of the City and the State of Kansas, by taking action to approve a forgivable loan, conditioned on local job creation and capital investment, to assist Cox Machine, Inc., in expanding its aerospace machining facility located in Wichita, Kansas,

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS AS FOLLOWS:

Section 1. Findings and Approval of Forgivable Loan. The City’s Governing Body hereby finds that providing a forgivable loan in the amount of \$25,000, to Cox Machine, Inc., will advance economic development in Wichita, Kansas and will serve a public purpose.

Section 2. Authorization of the Forgivable Loan Agreement and Promissory Note. The Mayor of the City of Wichita, Kansas is hereby authorized and directed to execute and deliver the Forgivable Loan Agreement and Promissory Note presented herewith, by and between Cox Machine, Inc., as Borrower and the City of Wichita as Lender for and on behalf of and as the act and deed of the City with such minor corrections or amendments thereto as the Mayor shall approve (which approval shall be evidenced by his execution thereof) and any such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the purposes and intent of this Ordinance. The City Clerk and any Deputy City Clerk of the City are hereby authorized and directed to attest the execution of the Forgivable Loan Agreement and Promissory Note, and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

Section 3. Further Authority. The City shall, and the officers, agents and employees of the City are hereby authorized and directed to, take such action and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the provisions of this Ordinance.

Section 4. Effective Date. This Ordinance shall take effect and be in full force from and after its adoption by the Governing Body of the City of Wichita, Kansas and publication once in the official newspaper of the City.

PASSED by the Governing Body of the City of Wichita, Kansas this ____ day of December, 2009.

CITY OF WICHITA, KANSAS

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

[Seal]

APPROVED AS TO FORM:

Gary E. Rebenstorf, City Attorney

City of Wichita
City Council Meeting
December 15, 2009

TO: Mayor and City Council

SUBJECT: Extension of IRB Tax Exemption (Big Dog Motorcycles, Inc.) (District I)

INITIATED BY: Office of Urban Development

AGENDA: New Business

Recommendation: Approve the extension.

Background: On September 9, 2003, City Council approved the issuance of Industrial Revenue Bonds in the amount of \$1,100,000 for Big Dog Motorcycles. Bond proceeds were used to finance an 18,000 s.f. warehouse building at 1520 E Douglas to create space for additional offices and manufacturing activities in the existing plant. The warehouse is used for motorcycle storage, parts storage, receiving and quality control. On December 2, 2008, City Council approved a one-year extension of the abatement based on the loss of jobs. Big Dog is requesting a second one-year extension of the property tax exemption.

Analysis: The majority of the Big Dog sales are exported outside of the State of Kansas. Since bonds were issued in 2000, Big Dog exceeded their commitment in employment and maintained 257 employees in 2003. In conjunction with the 2003 improvement project, Big Dog committed to adding 40 new jobs to their current employment within five years. Big Dog reached a high of 336 employees in 2005; however, economic downturns and market conditions have forced Big Dog to lay off a number of employees bringing the current employment to approximately 115.

A measure of Big Dog's initial five-year project commitments and outcomes are as follows:

2003 Commitment

Construct and equip a \$1.1 million expansion
Create 40 new jobs in five years

December 1, 2009 Status

Expansion is complete
Created 79 new jobs; then laid-off 221

Staff requested employment numbers in December 2009. Big Dog is working to expand their international sales in response to the economic conditions and increasing global competition the company is currently facing. The company continues to develop new models to meet market demands.

Staff has developed a proposed policy framework to evaluate extending property tax abatements for companies that are not in compliance, based on performance measures. The performance measures to be evaluated include whether the company's peak job creation numbers met the requirements at some time during the review period, whether capital investments were made as committed, and whether the required return on investment threshold of 1.3 to one was actually met.

The proposed framework also uses WSU's annual Current Conditions Index as a threshold indicator of how the general economic conditions impact a company's ability to perform. If a significant decrease in the Index has occurred from the time the incentives were approved to the time of the review, the company may qualify for an extension of incentives if a majority of the above-mentioned performance measures were met. For the purpose of this policy framework, a significant index decline would be a five percent decrease from one year to the next. Without a significant decline in the Current Conditions Index, all of the above-mentioned performance measures would have to be met for staff to recommend an extension of the incentives.

Big Dog has met two out of three of the performance measures. As shown above, they reached peak job creation in 2007 that exceeded the 40 new jobs and completed the capital investment; however, as shown below, the actual return of investment are well below that the 1.3 to one threshold due to the extent of lay-offs.

Financial Considerations: The appraised value of exempted property is approximately \$1,364,000. Big Dog is current in payments of administrative service fees.

New benefit-to-cost ratios are as follow:

City of Wichita	-2.29 to one
General Fund	-1.60 to one
Debt Service	-3.48 to one
Sedgwick County	-0.81 to one
USD 259	1.00 to one
State of Kansas	-81.15 to one

Goal Impact: Economic Vitality and Affordable Living. Granting an ad valorem property tax exemption will encourage the business to create new job opportunities and stimulate economic growth for the City of Wichita and Sedgwick County.

Legal Considerations: Section 7.5 of the lease provides the City Council reserves the right to terminate the exemption at the end of the first five-year period. Each year, the City must re-certify to the County Clerk that the exempted property is still eligible in order to continue the property tax exemption for that year. This allows the City Council to review non-complying companies each year and revisit the decision to extend the exemption.

Recommendations/Actions: It is recommended that the City Council extend the tax exemption on Big Dog Motorcycles, Inc.'s IRB bond-financed property a one-year period and review further extension at the end of year 2010.

Attachments: None

**City of Wichita
City Council Meeting
December 15, 2009**

TO: Mayor and City Council

SUBJECT: Extension of IRB Tax Exemption (Dean & DeLuca, Inc.) (District I)

INITIATED BY: Office of Urban Development

AGENDA: New Business

Recommendation: ~~Deny~~ *Approve* a one-year extension.

Background: On December 12, 2000, City Council approved issuance of Industrial Revenue Bonds in three series: Series IX-A in the aggregate principal amount of \$2,760,000; Series IX-B, in the aggregate principal amount of \$660,724, and Series IX-C in the aggregate principal amount of \$1,568,751 to Dean and DeLuca, Inc. City Council also approved 100% property tax abatement on bond-financed property for a 5-year term, plus a second 5 years subject to Council review. Bond proceeds were used for construction of a 52,000 s.f. building addition at Dean & DeLuca's existing facility located 2526 E. 36th Street N. Circle.

On December 31, 2005, the initial five-year period for tax exemption expired. On February 14, 2006, November 21, 2006, November 20, 2007, and December 9, 2008 City Council approved one-year extensions of the property tax exemption. Dean & DeLuca requests the City Council approve the final one-year extension of the tax exemption on bond-financed property for 2010.

Analysis: Dean & DeLuca, Inc. is a purveyor of gourmet and specialty foods, wines and kitchenware. In addition to five specialty markets, eight cafés and one wine store spread throughout the United States, a bulk of sales are made through the company's Internet/Direct operations—comprised of website and mail order catalog orders sent out to both retail locations and individual customers.

As a condition of the bond issue and tax exemption, Dean & DeLuca committed to construction of a 52,000 s.f. building addition with a total investment of \$4,989,475, and creation 255 new jobs within five years of the bond issue.

A measure of Dean & DeLuca's progress on commitments is as follows:

<u>2000 Commitment</u>	<u>December 1, 2009 Status</u>
Construct new building addition	Completed 52,000 s.f. building addition
Create 255 new jobs in five years	Created 230 new jobs at peak

Staff requested a headcount in December of 2009. The company has lost some positions as a result of recent economic downturns and lower sales projected for the 2009 holiday season. In October of 2007, the job creation was at 230 new positions, that number has decreased to 184.

Staff has developed a proposed policy framework to evaluate extending property tax abatements for companies that are not in compliance, based on performance measures. The performance measures to be evaluated include whether the company's peak job creation numbers met the requirements at some time

during the review period, whether capital investments were made as committed, and whether the required return on investment threshold of 1.3 to one was actually met.

The proposed framework also uses WSU's annual Current Conditions Index as a threshold indicator of how the general economic conditions impact a company's ability to perform. If a significant decrease in the Index has occurred from the time the incentives were approved to the time of the review, the company may qualify for an extension of incentives if a majority of the above-mentioned performance measures were met. For the purpose of this policy framework, a significant index decline would be a five percent decrease from one year to the next. Without a significant decline in the Current Conditions Index, all of the above-mentioned performance measures would have to be met for staff to recommend an extension of the incentives.

Dean & DeLuca has met two of the three conditions established. As shown below, the actual return on investment is above the 1.3 threshold; and as shown above, the capital investment was made as committed. Since 2000, the WSU Current Conditions Index has decreased 15% from 104 to 88.

Financial Considerations: The appraised value exempted property is currently \$2,366,800. Dean & DeLuca is current in payments of administrative service fees.

New benefit-to-cost ratios are as follow:

City of Wichita	1.47 to one
General Fund	1.37 to one
Debt Service	1.64 to one
Sedgwick County	1.26 to one
USD 259	1.00 to one
State of Kansas	11.83 to one

Goal Impact: Economic Vitality and Affordable Living. Continuing an ad valorem property tax exemption will assist the business in working to create new job opportunities and stimulate economic growth for the City of Wichita and Sedgwick County.

Legal Considerations: Section 7.5 of the lease provides that City Council reserves the right to terminate the exemption at the end of the first five-year period.

Each year, the City must re-certify to the County Clerk that the exempted property is still eligible in order to continue the property tax exemption for that year. This allows the City Council to review non-complying companies each year and revisit the decision to extend the exemption.

Recommendations/Actions: It is recommended that the City Council extend the tax exemption on Dean & DeLuca's IRB Bond-financed property for the last one-year period.

Attachments: None

**City of Wichita
City Council Meeting
December 15, 2009**

TO: Mayor and City Council

SUBJECT: Reserved Parking Sales Agreement (SMG Wichita/Select-A-Seat) (District I)

INITIATED BY: Office of Urban Development

AGENDA: New Business

Recommendation: Approve the agreement.

Background: The City has been working with SMG Wichita and Sedgwick County to coordinate the parking arrangements for INTRUST Bank Arena. In order to provide customer service and additional convenient parking options, the City and SMG will be offering advance purchase options for parking when tickets are purchased on Select-A-Seat. The attached agreement authorizes the advanced sale of parking spaces by SMG and prescribes the conditions under which the parking will be offered.

Analysis: The advance purchase of parking will be offered at Select-A-Seat's online ticket purchase system and at the INTRUST Bank Arena Box Office. Patrons will pay for the parking in advance and will be provided a permit for the parking lot in which the space is purchased. The City will begin by offering approximately 200 spaces for advanced purchase with the ability to expand into additional spaces depending on demand. The 200 spaces targeted for initial launch are adjacent to the arena site and comprise approximately .05% of the total parking space inventory. Parking space sales will close one week prior to each event in order to provide an accurate count of needed spaces to the parking operator. The City has sole discretion in setting the price of spaces; SMG will be allowed to charge a reasonable convenience fee for online and phone purchases. Service fees will not be charged for parking purchased at the box office.

SMG will not be allowed to contract with other parties for advance parking sales. The City will work with the parking operator to provide total sales for each event and determine the needs for operation of the lots with pre-purchased spaces.

Financial Considerations: SMG will reconcile with the City on a monthly basis to remit revenues from parking spaces sold. Revenues will be deposited in the City parking operations fund.

Goal Impact: This amendment supports the redevelopment of the core area and increases the vibrancy of the downtown neighborhood.

Legal Considerations: The City Law Department has prepared and approved the agreement as to form. SMG has agreed to the terms subject to Council approval.

Recommendations/Actions: It is recommended that the City Council approve the agreement and authorize the necessary signatures.

Attachments: Reserved Parking Advanced Sales Agreement

Reserved parking advanced sales agreement

This reserved parking advanced sales agreement is entered into on this ____ day of December, 2009 between the City of Wichita, Kansas, a municipal corporation (City) and SMG Corp., a Delaware corporation in good standing with the state of Kansas (SMG).

WHEREAS, Sedgwick County owns the facility known as INTRUST Bank Arena (hereinafter "the arena"), a modern, first-class, sports and entertainment venue with a maximum 15,000 seat capacity designed to provide maximum "fan experience" for all guests; and

WHEREAS, the arena is located in the center of a revitalizing area of downtown Wichita, the center city of Sedgwick County; and

WHEREAS, Sedgwick County has contracted with SMG to market and operate to the arena, including responsibility for the ticketing function; and

WHEREAS, the fan or patron experience will be enhanced by the opportunity to purchase reserved parking in proximity to the arena in conjunction with the purchase of tickets to any given arena event; and

WHEREAS, the opportunity to purchase reserved parking in conjunction with ticket purchases provides an added amenity which may enhance ticket sales; and

WHEREAS, City has built on its property certain parking lots in the vicinity of the arena, and has contracted for access and management of privately owned parking lots in the same vicinity, some or all of which the City may desire to pre-sell parking spaces in conjunction with arena event ticket purchased; and

WHEREAS, SMG has agreed that the ability to pre-sell parking spaces in conjunction with arena events can enhance the fan or patron experience and has agreed to incorporate reserved parking sales into the ticketing function for arena events; therefore the parties agree that:

1. SMG will include and market with the sale of Arena event tickets the opportunity for purchase of reserved passes for parking spaces to all parking lots, public or privately owned, identified by the city parking administrator for that purpose. The city parking administrator has full discretion to add or subtract lots, or the number of spaces within the lot, available for pre-sale for any given event.
2. The term of this agreement shall run from January 1, 2010 through December 31, 2010. It shall be renewable on the same terms and conditions, upon consent of the parties, for three additional, consecutive years. This agreement is subject to cancellation by the

either part, at its discretion at any time within the original contract term or within any successive renewal, upon ninety (90) days written notice to the other.

3. SMG will provide the city parking administrator with as much advance notice as possible of coming attractions and events at the arena, so that the price to be charged and the parking capacity to be arranged, both for pre-sale and day of event, on-site sale, can be determined. SMG may require an appropriate confidentiality agreement before sharing this information.
4. The city parking administrator will be allowed to set the price for parking passes in each lot used, and such prices may be adjusted for every event held at the arena. SMG acknowledges that both the City and County currently desire that a significant portion of the parking capacity be available for drive-up, direct purchase on the day of any given event.
5. The pre-sold parking passes will be valid for a one time, single event use, on a general admission basis, allowing access to a specific, designated lot only.
6. SMG will close the sale of reserved parking for any given event one week prior to the event's occurrence, and will report to the City prior to the day of occurrence the number of parking passes sold for each a designated parking lot.
7. As its sole compensation for this parking pass pre-sale service, SMG may add on and charge as part of the cost of the reserved parking pass a convenience fee of two dollars per parking pass to cover the cost of processing and handling. SMG will not charge the City or Sedgwick County for providing this service.
8. SMG agrees to sell reserved parking passes out of the arena box office up to one week prior to any event's occurrence without charging the convenience fee.
9. SMG agrees that it will not pre-sell parking passes for any other person or entity for arena events other than for the City, except for Sedgwick County on properties it owns.
10. SMG will sell ADA parking passes on the arena site as the need arises in the course of advanced parking sales, and that it will hold all remaining ADA parking spaces available for use by fans or patrons who a purchase parking pass at a City owned or operated parking lot on a drive up basis. The city parking administrator will provide for means to identify individuals so entitled to use arena site ADA parking spaces, and that means of

identification shall be determined after consultation with the arena manager for SMG. SMG will provide personnel to ensure that only drivers with ADA parking pass identification are allowed onto the arena property to use the ADA parking spaces.

11. SMG will report all advanced parking pass proceeds and settle its financial obligations on that accounting with the city parking administrator on the first business day of each month, or such other day has maybe agreed by the city parking administrator and the SMG arena manager. SMG management staff will also make available to the city parking administrator without cost such computerized reports relating to parking sales, ticket sales, and other information reasonably related to planning of future arena event parking availability.
12. To the extent allowed by the Kansas Tort Claims Act, each party shall save and hold the other harmless against all suits, claims, damages and losses asserted by any third party arising from or caused by errors, omissions or negligent acts of that party's own officers, agents, servants, or employees, occurring in the performance of its services under this Agreement.
13. The relationship of each party to the other is that of an independent contractor. No employee or agent of one party shall be considered an employee of the other party.
14. Each party shall comply with all laws, statutes and ordinances which may pertain to the providing of services under this agreement. This agreement shall be interpreted at all times so that the actions of the parties are in compliance with the Kansas Cash Basis Law and the Kansas Budget Law.
15. The services to be provided by SMG under this agreement are personal and cannot be assigned, delegated, or transferred without the specific written consent of the City.
16. SMG shall comply with all applicable requirements of the City of Wichita Revised Non-Discrimination and Equal Employment /Affirmative Action Program Requirements Statement for Contracts or Agreements attached hereto as Exhibit A.
17. It is specifically agreed between the parties that it is not intended by any of the provisions of any part of this agreement to create in the public or any member thereof a third-party beneficiary hereunder, or to authorize anyone not a party to this agreement to maintain a suit for damages pursuant to the terms or provisions of this agreement.

18. The parties shall not be obligated to resolve any claim or dispute related to the agreement by arbitration. Any reference to arbitration correspondence or other documents is deemed void.

19. This contract shall be interpreted according to the laws of the State of Kansas.

20. By signing this agreement each person represents that he or she is duly authorized by his or her private or municipal Corporation employer to bind that corporation to the provisions of this agreement.

IN WITNESS WHEREOF, the parties have set their hands the day and year first above written.

CITY OF WICHITA, KS.

SMG Corp.

Carl Brewer, Mayor

_____, President

Attest: _____
Karen Sublett, City Clerk

Attest: _____
Corporate Secretary

APPROVED AS TO FORM:

Gary E. Rebenstorf, City Attorney

**City of Wichita
City Council Meeting
December 15, 2009**

TO: Mayor and City Council

SUBJECT: Amendment to Interlocal Agreement between City of Wichita, Sedgwick County and U.S.D. 259 concerning Neighborhood Revitalization Area Program

INITIATED BY: Office of Urban Development

AGENDA: New Business

Recommendation: Approve the amended Interlocal Agreement.

Background: State law allows cities to adopt neighborhood revitalization area (“NRA”) plans which identify target areas within which property tax rebates may be granted by taxing authorities for property improvements. The Wichita City Council adopted an NRA Plan on April 7, 1998 and subsequently entered into an interlocal agreement with Sedgwick County and U.S.D. #259 to also permit the rebate of incremental county and school district property taxes under the City’s NRA Tax Rebate Program.

The NRA Plan was revised by the City Council on July 1, 2004 and again on April 17, 2007, in order to make changes to the NRA boundaries primarily and to make procedural adjustments to the program. Each time the Plan was revised, a new interlocal agreement was approved, except that in 2008 U.S.D. #259 requested a technical change to the interlocal agreement that could not be worked out at that time. Agreement has now been reached by staff of the three parties to the agreement and official action is needed to approve the amended agreement.

Analysis: The NRA Tax Rebate Program allows owners of property located within the NRA boundaries (see attached NRA Map) to receive a rebate based on the amount of increased property taxes that result from improvements made to the property. To qualify, the property owner must submit a copy of a building permit with a permit value of at least \$10,000, along with a two-page application, within six months of the issuance of the building permit. The applications are processed by the Office of Urban Development and forwarded to the Sedgwick County Appraisers Office, where the amount of the tax rebate is calculated. Each year, the Sedgwick County Treasurer and U.S.D. #259 remit aggregate rebate payments to the City for all rebate recipients that have paid their taxes that year, based on the County Appraiser’s calculations. The funds are credited into a special NRA Rebate Fund, into which the City’s share of aggregate rebate payment is transferred. The Urban Development Office then processes individual tax rebate payments and mails them to property owners.

The NRA Plan allows rebates to be paid on taxes resulting from property improvements for a five year term, following the first payment of increased taxes following completion of the improvements. The percentage of incremental taxes that can be rebated is based on types of property, as follows:

Single Family Residential	95%
Multi-Family Residential	75%
Commercial and Industrial	75%
Historic Properties*	95%

*Listed on national, state or local register of historic places or located within a designated historic district.

The attached Interlocal Agreement between the City, Sedgwick County and U.S.D. #259 generally sets forth the agreement of each of the parties to adopt the NRA Plan that was adopted by the City Council on April 17, 2007 and for the City and County to jointly administer the tax rebate program.

The changes from the interlocal agreement that was previously approved by the City Council in 2008 are marked in red in the attached draft agreement. One change makes the requirements of the 2007 NRA Plan applicable to all rebate recipients. This specifically pertains to the requirement that recipients continue to make property tax payments in order receive future rebate payments (delinquent taxpayers are barred from receiving future rebates). The other change makes the effective date of the interlocal agreement retroactive to July 1, 2008, when the term of the prior interlocal agreement expired.

Financial Considerations: There are no financial impacts of approving the amended interlocal agreement, other than continuation of the tax rebate program. The funding of the City's share of NRA rebate payments is split between the General Fund (75%) and the Debt Service Fund (25%).

Goal Impact: Economic Vitality and Affordable Living; Core Area and Neighborhood. Tax rebates encourage property owners in older areas of the City to invest in improvements to their property by temporarily eliminating the disincentive of increased taxes.

Legal Considerations: The interlocal agreement has been approved as to form by the Department of Law.

Recommendations/Actions: It is recommended that the City Council approve the amended Interlocal Agreement with Sedgwick County and U.S.D. #259 regarding the Neighborhood Revitalization Area Plan and authorize the necessary signatures.

Attachments: Amended NRA Interlocal Agreement

DRAFT

CITY OF WICHITA, KANSAS, THE BOARD OF COUNTY COMMISSIONERS OF SEDGWICK COUNTY, KANSAS, AND UNIFIED SCHOOL DISTRICT #259 SEDGWICK COUNTY, STATE OF KANSAS

INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT (hereinafter referred to as “Agreement”) entered in this _____ day of _____, 2009, by and between the City of Wichita, Kansas, a duly organized municipal corporation hereinafter referred to as “City”, Board of County Commissioners of Sedgwick County, Kansas, hereinafter referred to as “County” and Unified School District #259, Sedgwick County, State of Kansas; hereinafter referred to as “School Board” *is to memorialize that;*

WHEREAS, K.S.A. 12-2904 allows public agencies to enter into interlocal agreements to jointly perform certain functions including economic development; and

WHEREAS, all parties are pursuant to K.S.A. 12-2903 public agencies, capable of entering into interlocal agreements; and

WHEREAS, K.S.A. 12-17,114 et. seq. provides a program for neighborhood revitalization and further allows for the use of interlocal agreements between municipalities to further neighborhood revitalization; and

WHEREAS, it is the desire and intent of the parties hereto to provide the maximum economic development incentive as provided for in K.S.A. 12-17,119 by acting jointly.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS
CONTAINED HEREIN THE PARTIES AGREE AS FOLLOWS:

DRAFT

1. The parties agree to consider and adopt a neighborhood revitalization plan which was adopted by the Wichita City Council on April 17, 2007. *The parties further agree that provisions of the aforementioned neighborhood revitalization plan shall be applicable to all outstanding rebate recipients.* The parties further agree the neighborhood revitalization plan as adopted will not be amended by any of the parties except as may be necessary to comply with applicable state law or regulation, or to effect modifications mutually agreed to pursuant to Section 3, below.

2. The parties further agree that the City shall administer the Neighborhood Revitalization Plan as adopted by each party on behalf of the signatory parties. Certain Sedgwick County agencies will participate in the issuance of tax rebates in accordance with the Neighborhood Revitalization Plan. The parties acknowledge and agree that five (5%) percent of increment, as defined by K.S.A. 12-17,118, shall be used to pay for administrative costs of implementing and administering the plan, all as described in the Neighborhood Revitalization Plan. The administrative fee shall be evenly split between the City and County.

3. This agreement shall *be in effect starting July 1, 2008 and shall* expire June 30, 2013. The parties agree to undertake annual review of the Neighborhood Revitalization Plan commencing on or before August 15 of each year to determine any needed modifications to the neighborhood revitalization plan and participation in a new interlocal agreement. The parties agree that termination of this agreement by any party prior to June 30, 2013 would adversely impact the plan. Notwithstanding said impact, the parties further agree that any party may terminate this Agreement on any June 30th prior to June 30, 2013, by providing twelve (12) months notice in writing to the other parties to the Agreement. Provided, however, that any applications for tax rebate submitted prior to the effective date of the termination shall, if approved, be considered eligible for the duration of the rebate period. It shall be the responsibility of the City to timely notify and convene the parties to undertake an annual review of the Neighborhood Revitalization Plan and/or this agreement.

DRAFT

4. This agreement shall be executed in several counterparts, all of which together shall constitute one original agreement.

IN WITNESS WHEREOF, the parties have hereunto executed this contract as of the day and year first above written.

CITY OF WICHITA

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approve as to form:

Gary E. Rebenstorf, City Attorney

DRAFT

APPROVED by THE BOARD OF COUNTY COMMISSIONERS OF SEDGWICK COUNTY, KANSAS:

COMMISSIONERS PRESENT AND VOTING WERE:

DAVE UNRUH	_____
KARL PETERJOHN	_____
TOM WINTERS	_____
KELLY PARKS	_____
GWEN WELSHIMER	_____

Dated this _____ day of _____, 2009

THE BOARD OF COUNTY COMMISSIONERS
OF SEDGWICK COUNTY, KANSAS

ATTEST:

DAVE M. UNRUH, Commissioner
First District

KELLY B. ARNOLD, COUNTY CLERK

TIM NORTON, Commissioner
Second District

KARL PETERJOHN, Commissioner
Third District

APPROVED AS TO FORM:

KELLY PARKS, Chairman
Fourth District

Patricia J. Parker,
Assistant County Counselor

GWEN WELSHIMER, Chairman Pro Tem
Fifth District

DRAFT

APPROVED by UNIFIED SCHOOL DISTRICT NO. 259, SEDGWICK COUNTY,
STATE OF KANSAS, this ____day of _____, 2009.

UNIFIED SCHOOL DISTRICT #259
SEDGWICK COUNTY, STATE OF KANSAS

By _____
Lynn W. Rogers, President

ATTEST:

Mike Willome, Clerk of the Board

Approved as to Form:

Unified School District #259 Attorney

DRAFT

The above and foregoing Interlocal Agreement is approved by the Kansas Attorney General as provided by K.S.A. 12-2904(f) this ____ day of _____, 2009.

Steve Six, Kansas Attorney General

City of Wichita Arts Council
City Council Meeting
December 15, 2009

TO: Mayor and City Council
SUBJECT: Memorandum of Agreement between City of Wichita and McConnell Air Force Base for the facilitation of a McConnell Open House and Wichita Flight Festival (All districts)
INITIATED BY: Division of Arts & Cultural Services
AGENDA: New Business

Recommendation: Approve the Memorandum of Agreement (MOA).

Background: In anticipation of the Wichita Flight Festival and the McConnell Open House, the City of Wichita expressed a desire to partner with McConnell AFB to facilitate a public celebration of the aviation and military presence in our community. In 2009, McConnell AFB provided military and personnel support for the Wichita Flight Festival held August 29th and 30th at Jbara Airport.

Analysis: It was determined that to provide a world class Flight Festival and McConnell Open House, a partnership between the City of Wichita and McConnell AFB would create benefit opportunities for both parties by combining both parties' financial and personnel resources to produce, market, and manage a larger festival. As part of the intention of the MOA, the partners will work to cooperatively develop creative parking and security solutions and allow for effective opportunities for concessions and vendors. In addition, the partners will work cooperatively to provide a world class air show, static displays, children's activities, sponsorship packages, and educational opportunities.

Financial Consideration: No financial consideration at this time as the MOA was created to define the intent of each party in regard to the production, marketing and management of an aviation and Air Force celebration. A legal agreement defining the financial considerations will be drawn between the parties at a future date.

Goal Impact: To provide a world class aviation and Air Force festival that would be free and open to the citizens of Wichita to improve their Quality of Life.

Legal Consideration: Approved to form.

Recommendations/Actions: Approve the Memorandum of Understanding (MOU) between the City of Wichita and McConnell Air Force Base (McConnell AFB) with the intent to produce, market, and manage a combination public celebration focusing on the role of the aviation industry and the Air Force presence in the Wichita Community.

Attachment:

1. Memorandum of Agreement

Memorandum of Agreement

For Cooperation in Air Show/Open House Events

1. PARTIES

The Parties to this Memorandum of Agreement are the City of Wichita, providing services through its Arts and Cultural Services division (City) and the United States Air Force, providing services through the 22d Air Refueling Wing and volunteers affiliated with McConnell Air Force Base (McConnell), coordinating their activities for the purposes and within the limitations stated below. It is the intent of the Parties that McConnell host the "McConnell AFB Open House/Air Show" event every other year, and that the City host the "Wichita Flight Festival" event in alternating years.

2. AUTHORITY

31 U.S.C. § 1341, the Anti-Deficiency Act

Kansas Statutes Annotated 12-2908 of the Interlocal Cooperation Act

DoD Directive 5410.18, Public Affairs Community Relations Policy

DoD Instruction 5410.19, Public Affairs Community Relations Policy Implementation

Air Force Instruction 34-201, Use of Nonappropriated Funds

Air Force Instruction 34-262, Services Programs and Use Eligibility

Air Force Instruction 34-407, Air Force Commercial Sponsorship Program

Air Force Instruction 35-101, Public Affairs Policies and Procedures

Air Force Instruction 10-1001, Civil Aircraft Landing Permits

3. PURPOSE

The parties seek to produce, market and manage a combination public festival celebrating the role of the aviation industry and Air Force presence in the Wichita community with an Air Show/Open House attraction and such other events and activities as would be suitable to the enhancement of the festival.

4. RESPONSIBILITIES

- A. Representatives of the parties will work cooperatively for site planning for the event, which should incorporate creative parking and security solutions, and allow effective opportunities for concessions and other vendors working in coordination with the 22d Force Support Squadron. Air Show/Open House events will provide maximum safety for performers and spectators. Ultimate decisions for site planning shall rest with the party whose facility is used for the event.
- B. The facilities available for the festival should be used to best advantage to provide for static displays of general aviation as well as military and "warbird" aircraft, activities for children, and educational opportunities for pilots, enthusiasts, youth, etc. Provision for parking, security and safety concerns, concessions and other vendors, as mentioned above should be included in facility preparations.
- C. The parties will jointly develop festival volunteer and event opportunities for local aviation/pilot associations and organizations. The party whose facility is used for the event shall be the party responsible for securing competent labor, when volunteers are deemed inappropriate, for all operations functions, including cleanup after the festival.
- D. The party whose facility is used for the event shall obtain permits and licenses as required by federal, state, and/or municipal law, and shall secure, or require insurance coverage to be secured, for all events and activities for the risk coverages and in the amounts the parties deem reasonable and appropriate.
- E. Event marketing will include solicitation of corporate sponsors for underwriting specific Air Show/Open House performers and/or sponsorship of corporate chalets or other similar facilities/activities. The City will have sole right to determine sponsorship packages and benefits afforded corporate sponsors and retain the exclusive right to secure those commitments unless otherwise agreed upon. All efforts to solicit commercial sponsorship of events and activities to be conducted on McConnell Air Force Base shall be coordinated with the 22d Force Support Squadron's, Services Commercial Sponsorship Program, and must comply with Department of Defense and Air Force Ethics Standards.
- F. Each entity is a self insured governmental entity. Each agrees to indemnify the other for any damage that might occur to the property or equipment of the other due to the negligence of the employees of the other. In accordance with the Anti-Deficiency Act, this indemnification agreement limits liability of McConnell Air Force Base to available appropriations and funds that have been certified as available to meet the contingency. The parties agree that volunteers used during the event will not be considered the employees of either party for purposes of liability determination.
- G. Liability arising from commercial source support of an open house rests with the commercial source. Commercial sources are not entitled to sovereign immunity or similar legal protections accorded the Air Force or nonappropriated fund

instrumentalities. Likewise, a commercial source would not be afforded defense by the Department of Justice in the event of civil suit. Furthermore, as noted above, the Air Force may not indemnify a commercial source for liability.

5. REIMBURSEMENTS

The parties agree to evaluate the anticipated operating costs of each Air Show/Open House event, determine the priorities for reimbursement of costs incurred, and provide a formula or division of proceeds appropriate for each specific event, in compliance with federal, state, and municipal fiscal and acquisitions law. Further, in accordance with the Antideficiency Act, this agreement is not to be interpreted as a contract which permits McConnell or any federal agency to reimburse the City, contractors, or commercial sources, without limit, for uninsured liabilities to third persons for death, personal injury, or property damage arising out of contract performance.

6. POINTS OF CONTACT

- A. For the City of Wichita:
John D'Angelo
Director of Cultural Arts and Services
City of Wichita, Kansas

- B. For the United States Air Force:
Lt Col John Pantleo
349th Air Refueling Squadron
McConnell Air Force Base, Kansas

7. OTHER PROVISIONS

- A. Notwithstanding anything in this Agreement, each party shall retain the exclusive authority to direct its own employees and to implement its own statutory responsibilities.

- B. Nothing in this Agreement is intended to conflict with current federal or state law, or the regulations or directives of the Parties. If a term of this Agreement is inconsistent with such authority, then that term shall be invalid, but the remaining terms and conditions of this Agreement shall remain in full force and effect.

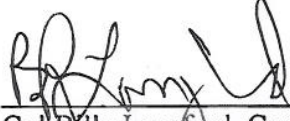
8. EFFECTIVE DATE

This Agreement shall become effective upon authorized signature of all parties.

9. TERMINATION

Either party may withdraw from this Agreement upon 90 days notice in writing to the other parties.

For the United States Air Force



Col Billy Langford, Commander
22d Operations Group
McConnell AFB, Kansas

Date: 1 Dec 09

For the City of Wichita, Kansas

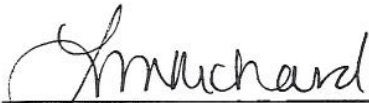
Carl Brewer, Mayor
City of Wichita, Kansas

Date: _____

Attest:

Karen Sublett, City Clerk

Approved as to form:



Capt Lisa M. Richard, DSJA

Gary E. Rebenstorf, City Attorney

City of Wichita Arts Council
City Council Meeting
December 15, 2009

TO: Mayor and City Council

SUBJECT: Operational Agreements for Mid-America All-Indian Center and Wichita-Sedgwick County Historical Museum (All Districts)

INITIATED BY: Division of Arts & Cultural Services

AGENDA: New Business

Recommendation: Approve the Operational Agreements between the City of Wichita and the Mid-America All-Indian Center and the Wichita-Sedgwick County Historical Museum.

Background: As part of the recommendations from the Cultural Arts Plan, which was approved by Wichita City Council in November 2008, five-year operational agreements have been created with arts and cultural organizations that fit the definition of Group One organizations. The Operational Agreements are five-year agreements with annual review by the Cultural Funding Committee and approval by members of City Council.

The purpose of the Operational Agreements is to clearly define expectations between the City of Wichita and the organization as identified below:

- To protect the City's investment in the Group One organizations.
- To make recommendations to the Wichita City Council on appropriate funding levels for organizations to achieve excellence.
- To define specific criteria to determine performance excellence.
- To define maintenance and personnel expectations and requirements.

A Group One organization as defined by the Cultural Arts Plan is an organization that has more than one of the following attributes:

- City owned facilities or land,
- City owned collections (artifacts, exhibits, displays, etc.),
- City employees,
- And/or significant City support for the organization's annual operating budget.

Group One organizations that meet this definition and have been identified as Group One are:

- Botanica
- Mid-America All-Indian Center Museum
- Old Cowtown Museum
- Wichita Art museum
- Wichita-Sedgwick County Historical Museum

The Operational Agreements for Botanica and the Wichita Art Museum were included and approved with the Performance Contracts during the October 20, 2009 City Council meeting. The Operational Agreements for Mid-America All-Indian Center and the Wichita-Sedgwick County Historical Museum were not completed or approved by their Board of Trustees by that deadline. Old Cowtown Museum does not have an Operational Agreement.

Analysis: As part of the Operational Agreement requirements, organizations must provide an annual report which will be reviewed by the Cultural Funding Committee. These reports will be used to determine achievement of goals and to determine the appropriate levels of funding to allow the organizations to achieve excellence. In addition to performance criteria the Operational Agreements also allow for an annual three-year “performance review” and development of improvement plans should the organization not perform as expected. The Operational Agreements for Mid-America All-Indian Center and Wichita-Sedgwick County Historical Museum are in line with the same operational agreements for the other Group One organizations which were approved by Council on October 20, 2009.

As a result of the approval of the previous operational agreements submitted, the agreement for the Mid-America All-Indian Center and Wichita-Sedgwick County Historical Museum will also be required to provide:

- Demonstration of financial growth over a three-year time period.
- Assurance of financial security by maintenance of a three to six month operating reserve.
- Annual review of funding amounts identified in the Operating Agreement by the Cultural Funding Committee.
- Submission of annual reports to the Cultural Funding committee for review.
- Development of Improvement Plans for organizations who do not meet excellence criteria established as a result of the annual review these agreements.
- Accountability of funding expenditures to the City.
- Inclusion of City representation on all boards.

Financial Consideration: The recommended funding amounts are included in the 2010 Adopted Budget. The amount adopted for Mid-America All-Indian Center for 2010 is \$157,900. The amount adopted in the 2010 Budget for the Wichita-Sedgwick County Museum is \$136,000.

Goal Impact: These agreements will enhance the Quality of Life for citizens of Wichita by protecting the City’s investment in arts and cultural organizations.

Legal Consideration: The contract has been approved as to form by the Department of Law.

Recommendations/Actions: Approve the Operational Agreements between the City of Wichita and the Mid-America All-Indian Center and the Wichita-Sedgwick County Historical Museum.

Attachment:

1. Mid-America All-Indian Center Operational Agreement
2. Wichita-Sedgwick County Historical Museum

Operating Agreement Mid-America All-Indian Center Inc.

1. **Purpose.** The purpose of this Agreement is to define the City of Wichita's financial, personnel and operational relationship with the Mid-America All-Indian Center Inc. Any existing leasehold interest of City property held by the Mid-America All-Indian Center Inc. is not subject to change by this Agreement.
2. **Term.** The term of this Agreement shall be for a period of five (5) years commencing upon the 1st day of January, 2010.
3. **City Funding.** In return for the Mid-America All-Indian Center Inc.'s performance of duties specified in this Operating Agreement, the City agrees to provide annual funding (payable to the Mid-America All-Indian Center Inc. in accordance with Section 6 below) in the following calendar years and amounts:

2010	_____ \$157,900.00 _____
2011	_____ \$160,268.50 _____
2012	_____ \$165,076.55 _____
2013	_____ \$170,028.85 _____
2014	_____ \$175,129.72 _____

Mid-America All-Indian Center Inc. shall maintain its current operating reserve to ensure financial security for at least 3 to 6 months of operating expenses.

Mid-America All-Indian Center Inc. shall demonstrate average annual growth in earned income and/or private contributions in each rolling three year period covered by this Agreement.

4. **Personnel.** Mid-America All-Indian Center Inc. employs no City personnel, but City employees under City direction may be employed to work at the Mid-America All-Indian Center Inc. facility. These City employees are provided at the direction and request of the Mid-America All-Indian Center Board of Trustees based upon agreed positions, duties, and staffing levels. The Mid-America All-Indian Center Inc. is obligated to reimburse the City for the full personnel costs of the City employees provided in this manner, except that the Mid-America All-Indian Center Inc. will not be obligated to reimburse the City for the personnel costs of

the City employees for any time spent working for any department or facility of the City unless said time is for the direct benefit of the Mid-America All-Indian Center Inc.

5. **Employment of the Director.** The City is responsible for the hiring and/or termination of all employees of the City working at Mid-America All-Indian Center Inc., including the Director of the Mid-America All-Indian Center Inc., but shall consult with the Board of Trustees of the Mid-America All-Indian Center regarding such hirings and/or terminations. The Director will supervise the overall operation of the Mid-America All-Indian Center Inc. The City shall establish the Director's compensation and other terms and conditions of employment, but shall consult with the Mid America All Indian Center regarding such compensation and conditions.

The Director shall take guidance and direction from the Board of Trustees of the Mid-America All-Indian Center Inc., but shall conduct all work under the direct supervision from the Director of Arts & Cultural Services. Mid-America All-Indian Center Inc. and the City agree that the City Manager or Director of Arts & Cultural Services shall consult with the Chairperson of the Board of the Mid-America All-Indian Center Inc. to complete personnel evaluations of the Mid-America All-Indian Center Inc.'s Director and will work in cooperation to determine and establish the appropriate levels of staffing for the facility.

6. **Use of City Funds.** Requested funds in the "Contractual Services Account" will be disbursed by the City to Mid-America All-Indian Center Inc. no later than 30 days after submission of approved invoices covering expenses for which said funds are appropriated.

Mid-America All-Indian Center Inc. agrees to devote the assets, resources, and funds provided by the City of Wichita exclusively for purposes advocating the mission of the Mid-America All-Indian Center Inc. This mission as defined by the Board of Trustees is to serve as a cultural center and museum dedicated to educating people about and preserving the heritage of the American Indian. City funding for the operation of Mid-America All-Indian Center Inc. shall be appropriated annually in accordance with the funding agreement in existence between the City and Mid-America All-Indian Center Inc.

7. **Supplemental City funding.** Mid-America All-Indian Center Inc. may apply for Operational Grant Cultural Funding through the competitive grant process.

8. **Complete Agreement.** This agreement supersedes all prior agreements between the parties specifically dealing with funding. Unless otherwise noted, it does not apply to prior or existing leases.
9. **Rules of Operation.** Mid-America All-Indian Center Inc. agrees to adopt, publish, and enforce reasonable rules and regulations governing the conduct of visitors to Mid-America All-Indian Center Inc. consistent with the provisions of this Agreement, which rules and regulations may be revised by Mid-America All-Indian Center Inc. from time to time.
10. **Admission Fees.** Mid-America All-Indian Center Inc. shall have the right to establish, collect and retain all fees for admission to Mid-America All-Indian Center Inc. and for all activities held therein.
11. **Use of Facility.** Mid-America All-Indian Center Inc. shall have the exclusive right to occupy and use the facility and land pursuant to the existing leasehold interest of City property held by the Mid-America All-Indian Center Inc. for advancement of the mission of the Mid-America All-Indian Center Inc., and to establish, collect, and retain all charges derived from any rentals, charges, fees, concessions, or other uses of the facility and land for the furtherance of that mission.
12. **Gifts and Endowments.** Mid-America All-Indian Center Inc. agrees to exert its reasonable efforts to secure gifts of cash, property, in-kind goods and services and bequests and endowments for structures, capital improvements and the like to be used for advancement of the mission of the Mid-America All-Indian Center Inc.
13. **Budget.** The City agrees to make every good faith effort to aid in the funding of the operation of the Mid-America All-Indian Center Inc. for the advancement of the mission of the Mid-America All-Indian Center Inc.
14. **Capital Improvements.** Mid-America All-Indian Center Inc. shall have the authority to recommend for approval the future design and development of the facilities used by the Mid-America All-Indian Center Inc., but no capital or structural improvements to existing buildings or additions or future construction of buildings or additions shall be made without the prior approval of the City.
15. **Utilities.** Mid-America All-Indian Center Inc. shall pay all deposits and charges for two telephone lines, and the City shall be responsible for the balance of the charges for electricity, water, gas, telephone, air conditioning and heating, sewer charges, garbage and trash collection, and all other utilities and charges for services used by or furnished to Mid-America All-Indian Center Inc.'s facilities

16. **Right to Inspect.** City reserves and shall always have the right to enter Mid-America All-Indian Center Inc.'s facilities without cost for the purpose of viewing and ascertaining the condition of the same and to protect its interest in the premises
17. **Care and Maintenance.** The City agrees to provide for the upkeep of the buildings and grounds of Mid-America All-Indian Center Inc.'s facilities, to make any and all reasonably necessary repairs, replacements, renewals, to all of the property, real and personal, over which Mid-America All-Indian Center Inc. exercises responsibility under this agreement.
18. **Ownership of Property.** All buildings and land, including any and all new facilities constructed or reconstructed on the premises during the term of this Agreement at the request and expense of the City, shall be and remain in the ownership of the City, including the area commonly known as the Keeper of the Plains Plaza. All outdoor exhibits, including, but not limited to, the Village Encampment Exhibit and the Heritage Pole, shall be and remain in the ownership of the Mid-America All-Indian Center Inc.
19. **Insurance.** Mid-America All-Indian Center Inc. agrees to secure and maintain in force throughout the duration of this agreement the following minimum insurance coverage:

Comprehensive General Liability covering premises—operations, Broad Form Property Damage and Contractual Liability with minimum limits as follows:

Bodily Injury Liability	\$500,000 each occurrence \$500,000 each aggregate
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Property Damage Liability	\$500,000 each occurrence \$500,000 each aggregate
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Or

Bodily Injury and Property Damage Liability (Combined Single Limit)	\$500,000 each occurrence \$500,000 each aggregate
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20. **Hold Harmless.** Without regard to the limits of such insurance set out in section 20, but within the requirements of the Kansas Tort Claims Act, Mid-America All-Indian Center, Inc. and the City agree to save and hold each other harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions

or negligent acts of its officers, agents, servants, or employees, occurring in the performance of its services under this contract.

21. **Default Cure Period.** Either party's failure to perform any of its obligations under this Agreement after a period of fourteen (14) days (or the additional time, if any, that is reasonably necessary to promptly and diligently cure the failure) after receiving written notice from the other party shall constitute a default under this Agreement. Any such written notice shall give reasonable detail in the nature and extent of the failure and identify the Agreement's provision(s) containing the obligations at issue. If the default continues after such notice and cure period, then the offending party shall be in default and the other party may pursue any remedies given in this Agreement or under the law.
22. **Mechanics Liens.** Mid-America All-Indian Center Inc. and the City agree to save and hold each other free and harmless and indemnify the other against all claims for labor and materials in connection with improvements, repair or alterations to Mid-America All-Indian Center Inc. that were conducted at the specific request and expense of the other, and the cost of defending against such claims, including reasonable attorney's fees.
23. **Parking Lot Maintenance.** City shall at its sole expense, pave and perform all maintenance on the existing parking lot constructed for use at Mid-America All-Indian Center Inc.'s facilities and shall maintain such parking lot in good condition and repair.
24. **Compliance with Law.** Mid-America All-Indian Center Inc. shall, at its sole cost and expense, materially comply and secure compliance with all requirements of Municipal, State and Federal authorities now in force, or which may hereafter be in force, pertaining to the premises covered by this Agreement, or the operations conducted thereon, and shall faithfully observe, and secure observance with, in the use of the premises, all Municipal ordinances and State and Federal Statutes now in force or which may hereafter be in force, and shall pay before delinquency all taxes, assessments, and fees assessed or levied upon Mid-America All-Indian Center Inc. or the premises by reason of any buildings, structures, machines, appliances or other improvements of any nature whatsoever, erected, installed or maintained by Mid-America All-Indian Center Inc. or by reason of the business or other activities of Mid-America All-Indian Center Inc. upon or in connection with said premises. Mid-America All-Indian Center Inc. specifically agrees to maintain a tax exempt status per

applicable state and federal revenue and taxation codes during the entire term of this agreement. Failure to maintain such tax exempt status shall be considered a material default of this agreement.

25. **Accounting, Record Keeping, Audit.** All accounting for the receipt and disbursement of City funding shall be performed in accordance with generally accepted accounting principles for governments. City shall make all such records available to the Mid-America All-Indian Center Inc. or its authorized representative during normal business hours.

Mid-America All-Indian Center Inc. All accounting for the receipt and disbursement of Mid-America All-Indian Center Inc. funds shall be performed in accordance with generally accepted accounting principles for nonprofit organizations. Mid-America All-Indian Center Inc. shall, within 120 days of the end of each year, make available to the City financial statements for the year together with an independent auditor's report signed by a certified public accountant. Mid-America All-Indian Center Inc. shall make all financial records available to the City or its authorized representative for inspection, review, or audit during normal business hours.

26. **Changes in By-Laws.** Any proposed changes in the corporate powers or structure of Mid-America All-Indian Center Inc., or its by-laws which would materially affect its ability to carry out the purposes of this Agreement shall be immediately communicated to the City.

27. **Equal Employment Opportunity.** Mid-America All-Indian Center Inc. shall ensure that all services and facilities offered and operated by Mid-America All-Indian Center Inc. in connection with Mid-America All-Indian Center Inc. are open and available to all members of the public regardless of race, religion, national origin, sex, disability and political belief.

Mid-America All-Indian Center Inc. shall observe the provisions of the Kansas act against discrimination and shall not discriminate against any person in the performance of work under this contract because of race, religion, color, sex, disability, national origin, age or ancestry.

In all solicitations or advertisements for employees, Mid-America All-Indian Center Inc. shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Kansas Human Rights Commission.

28. **Cash Basis and Budget Laws.** The right of the City to enter into this Agreement is subject to the provision of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-29350), and other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the City shall at all times stay in conformity with such laws, and as a condition of this Agreement the City reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the reasoned opinion of its legal counsel, the Agreement may be deemed to violated the terms of such laws.
29. **Non-Assignability.** Neither this Agreement nor any rights or obligations hereunder shall be assigned or otherwise transferred by either party without the written consent of the other party.
30. **Organization's Governing Board.** It is mutually understood and agreed by the parties hereto that under no circumstances shall the City make any claim to any of the assets of the organization's governing board or its successor. The City shall have one (1) City Council appointed designee on the Board of Trustees governing board, but, prior to any appointment, the City shall consider recommendations from the Board of Trustees of the Mid-America All-Indian Center regarding such appointment.
31. **Annual Reports.** Mid-America All-Indian Center Inc. agrees to submit, on an annual basis, a State of the Organization report similar to a Board of Director's report that addresses financial stability, growth and strategic planning. The annual report should also address paid attendance, programming growth, capital improvements (if any) and the most current IRS 990 form. The organization agrees to undergo an annual review process. Any deficiencies in performance or stability will require the Board of Trustees to work with the City to develop an improvement plan.
32. **Collaboration with other organizations.** Mid-America All-Indian Center Inc. agrees to use reasonable efforts to create collaborative partnerships to share resources among multiple cultural arts organizations.
33. **Extensions.** The parties acknowledge that the operation of the Mid-America All-Indian Center Inc. requires a collaborative effort by the parties and they, therefore, agree to negotiate any and all extension, revisions, and amendments to this Agreement in good faith.

THE CITY OF WICHITA, KANSAS

By:-----
Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf, Director of Law
And City Attorney

ATTEST:

MID-AMERICA ALL-INDIAN CENTER, INC.

By: Paula D. Langworthy
Chairperson of the Board of Trustees

Operating Agreement Wichita Historical Museum

1. **Purpose.** The purpose of this Agreement is to define the City of Wichita's financial, personnel and operational relationship with the Wichita-Sedgwick County Historical Museum Association (Museum). The existing lease between the City and the Museum is not subject to change by this agreement.
2. **Term.** The term of this Agreement shall be for a period of five (5) years commencing upon January 1, 2010.
3. **City Funding.** In return for the Museum's performance of duties specified in this Operating Agreement, the City agrees to provide annual funding (payable to the Museum in accordance with Section 5 below) in the following calendar years and amounts:

2010	\$136,000.00
2011	\$138,040.00
2012	\$142,181.20
2013	\$146,446.64
2014	\$150,840.04

Museum shall maintain its operating reserve to ensure financial security for at least 3 to 6 months of operating expenses.

Museum shall demonstrate average annual growth in earned income and/or private contributions in each rolling three year period covered by this Agreement.

4. **Personnel.** Museum employs no City personnel.
5. **Use of City Funds.** Requested funds in the "Contractual Services Account" will be disbursed by the City to Museum no later than 30 days after submission of approved invoices covering expenses for which said funds are appropriated.

Museum agrees to devote the assets, resources, and funds provided by both the City of Wichita and Museum exclusively for purposes advocating the mission of the Museum. This mission as defined by the Board of Directors is to educate the community and its visitors about local history by collecting, preserving, and interpreting materials reflecting the

heritage of Wichita and Sedgwick County. City funding for the operation of Museum shall be appropriated annually in accordance with the funding agreement in existence between the City and Museum.

6. **Supplemental City funding.** Museum may apply for Operational Grant Cultural Funding through the competitive grant process.
7. **Complete Agreement.** This agreement supersedes all prior agreements between the parties specifically dealing with funding. Unless otherwise noted, it does not apply to prior or existing leases.
8. **Rules of Operation.** Museum agrees to adopt, publish, and enforce reasonable rules and regulations governing the conduct of visitors to Museum consistent with the provisions of this Agreement, which rules and regulations may be revised by Museum from time to time.
9. **Admission Fees.** Museum shall have the right to establish, collect and retain all fees for admission to Museum and for all activities held therein. The amounts of said fees and any changes thereto shall be reported to the City.
10. **Concessions.** Museum shall have the exclusive authority to operate, or to cause to be operated, all concessions on Museum property and to establish, collect and retain all charges derived from such concessions for Museum purposes. Any concessionaire shall comply with all applicable state and local statutes, ordinances and regulations.
11. **Rental.** The Museum staff acting on behalf of the Museum Board shall have the exclusive authority to establish, collect and retain all rent and other charges and fees for use of Museum facilities and property for approved purposes.
12. **Gifts and Endowments.** Museum agrees to exert its reasonable efforts to secure gifts of cash, property, in-kind goods and services and bequests and endowments for structures, capital improvements and the like to be used for advancement of the mission of the Museum.
13. **Budget.** The City agrees to make every good faith effort to properly fund the operation of the Museum for the advancement of the mission of the Museum.
14. **Capital Improvements.** Museum shall have the authority to recommend for approval the future design and development of the facilities used by

the Museum, but no capital or structural improvements to existing buildings or additions or future construction of buildings or additions shall be made without the prior approval of the City.

15. **Utilities.** Museum has paid all deposits for electricity, water, gas, telephone, air conditioning and heating, sewer charges, garbage and trash collection, and all other utilities for services used by or furnished to Museum's facilities, and the City has acquired and maintained all meters, permits, approvals, and licenses necessary to effectuate this provision. Museum has paid, and will continue to pay for all utility charges incurred on the property.
16. **Right to Inspect.** City reserves and shall always have the right to enter Museum's facilities without cost for the purpose of viewing and ascertaining the condition of the same and to protect its interest in the premises or to inspect the operations conducted on said premises.
17. **Ownership of Property.** All buildings, land, exhibits, including any and all new facilities constructed or reconstructed on the premises during the term of this Agreement, shall be and remain in the ownership of the City.
18. **Insurance.** Museum agrees to secure and maintain in force throughout the duration of this agreement the following minimum insurance coverage:

A. Comprehensive General Liability covering premises—operations, Broad Form Property Damage and Contractual Liability with minimum limits as follows:

Bodily Injury Liability	\$500,000 each occurrence \$500,000 each aggregate
Property Damage Liability	\$500,000 each occurrence \$500,000 each aggregate

Or

Bodily Injury and Property Damage Liability (Combined Single Limit)	\$500,000 each occurrence \$500,000 each aggregate
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B. Automobile Liability - Comprehensive Form including all owned, hired and non-owned vehicles with minimum limits for:

Bodily Injury Liability	\$500,000 each accident
Property Damage Liability	\$500,000 each accident
Or	

Bodily Injury and Property Damage Liability (Combined Single Limit)	\$500,000 each accident
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19. **Hold Harmless.** Without regard to the limits of such insurance, but within the requirements of the Kansas Tort Claims Act, Museum and the City agree to save and hold each other harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of its officers, agents, servants, or employees, occurring in the performance of its services under this contract.
20. **Default Cure Period.** Either party's failure to perform any of its obligations under this Agreement after a period of fourteen (14) days (or the additional time, if any, that is reasonably necessary to promptly and diligently cure the failure) after receiving written notice from the other party shall constitute a default under this Agreement. Any such written notice shall give reasonable detail in the nature and extent of the failure and identify the Agreement's provision(s) containing the obligations at issue. If the default continues after such notice and cure period, then the offending party shall be in default and the other party may pursue any remedies given in this Agreement or under the law.
21. **Mechanics Liens.** Museum and the City agree to save and hold each other free and harmless and indemnify each other against all claims for labor and materials in connection with improvements, repair or alterations to Museum that were conducted at the specific request and expense of the other, and the cost of defending against such claims, including reasonable attorney's fees.
22. **Compliance with Law.** Museum shall, at its sole cost and expense, materially comply and secure compliance with all requirements of Municipal, State and Federal authorities now in force, or which may hereafter be in force, pertaining to the premises covered by this

Agreement, or the operations conducted thereon, and shall faithfully observe, and secure observance with, in the use of the premises, all Municipal ordinances and State and Federal Statutes now in force or which may hereafter be in force, and shall pay before delinquency all taxes, assessments, and fees assessed or levied upon Museum or the premises by reason of any buildings, structures, machines, appliances or other improvements of any nature whatsoever, erected, installed or maintained by Museum or by reason of the business or other activities of Museum upon or in connection with said premises. Museum specifically agrees to maintain a tax exempt status per applicable state and federal revenue and taxation codes during the entire term of this agreement. Failure to maintain such tax exempt status shall be considered a material default of this agreement.

23. **Accounting, Record Keeping, Audit.** All accounting for the receipt and disbursement of City funding shall be performed in accordance with generally accepted accounting principles for governments. City shall make all such records available to the Museum or its authorized representative during normal business hours.

All accounting for the receipt and disbursement of Museum funds shall be performed in accordance with generally accepted accounting principles for nonprofit organizations. Museum shall, within 180 days of the end of each year, make available to the City financial statements for the year together with an independent auditor's report signed by a certified public accountant. Museum shall make all financial records available to the City or its authorized representative for inspection, review, or audit during normal business hours.

24. **Changes in By-Laws.** Any proposed changes in the corporate powers or structure of Museum, or its by-laws which would materially affect its ability to carry out the purposes of this Agreement shall be immediately communicated to the City.

25. **Equal Employment Opportunity.** Museum shall ensure that all services and facilities offered and operated by Museum in connection with Museum are open and available to all members of the public regardless of race, religion, national origin, sex, disability and political belief.

Museum shall observe the provisions of the Kansas Act against Discrimination and shall not discriminate against any person in the

performance of work under this contract because of race, religion, color, sex, disability, national origin, age or ancestry.

In all solicitations or advertisements for employees, Museum shall include the phrase “equal opportunity employer” or a similar phrase to be approved by the Kansas Human Rights Commission.

26. **Cash Basis and Budget Laws.** The right of the City to enter into this Agreement is subject to the provision of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-29350), and other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the City shall at all times stay in conformity with such laws, and as a condition of this Agreement the City reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the reasoned opinion of its legal counsel, the Agreement may be deemed to violated the terms of such laws.
27. **Non-Assignability.** Neither this Agreement nor any rights or obligations hereunder shall be assigned or otherwise transferred by either party without the written consent of the other party.
28. **Organization’s Governing Board.** It is mutually understood and agreed by the parties hereto that under no circumstances shall the City make any claim to any of the assets of the organization’s governing board or its successor. The Museum shall have one (1) City Council appointed designee on the Board of Directors of the governing board, but prior to any appointment the City shall consider the recommendations of the Museum’s Board of Trustees regarding such appointment.
29. **Annual Reports.** Museum agrees to submit, on an annual basis, a State of the Organization report similar to a Board of Directors’ report that addresses financial stability, growth and strategic planning. The annual report should also address paid attendance, programming growth, capital improvements (if any) and the most current IRS 990 form. The organization agrees to undergo an annual review process. Any deficiencies in performance or stability will require the Board of Directors to work with the City to develop an improvement plan.
30. **Collaboration with Other Organizations.** Museum shall strive to create collaborative partnerships to share resources among multiple cultural arts organizations.

31. **Extensions.** The parties acknowledge that the operation of the Museum requires a collaborative effort by the parties and they, therefore, agree to negotiate any and all extension, revisions, and amendments to this Agreement in good faith.

THE CITY OF WICHITA, KANSAS

By: _____
Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf, Director of Law
And City Attorney

ATTEST:

**WICHITA-SEDGWICK COUNTY
HISTORICAL MUSEUM ASSOCIATION**

_____ By: _____

City of Wichita
City Council Meeting
December 15, 2009

TO: Mayor and City Council Members

SUBJECT: Ordinance amending Section 5.88.010 of the Code of the City of Wichita, Kansas, pertaining to the crime of Unlawful Use of Weapons.

INITIATED BY: Wichita Police Department

AGENDA: New Business

Recommendation: Place amendment of ordinance on first reading.

Background: K.S.A. 21-4201 is the state statute equivalent of City of Wichita Ordinance No. 5.88.010. State statute purports to allow for knives that open automatically by button on the blade. An Attorney General opinion supports this premise. City ordinance does not allow the possession of these knives. While City ordinance may be more restrictive than state statute, the differences have led to public confusion regarding the legality of possession. Changes to this section will align City ordinance to state statute. Changes to the concealed carry section clarify the state statute mandate that concealed carry permit holders may only carry concealed, not unconcealed, firearms. The proposed amendments also recognize the new state statute provision allowing certain prosecutors to carry concealed firearms in the course of, or incidental to, their duties.

Analysis: The amendments to City of Wichita Ordinance 5.88.010 would make the provisions conform to the mandates found in K.S.A. 21-4201, regarding unlawful use of weapons.

Financial Considerations: None.

Goal Impact: Provide a Safe and Secure Community. This ordinance will allow the Wichita Police Department to charge violations pertaining to unlawful use of weapons under the same elements utilized by state statute.

Legal Considerations: The City of Wichita Law Department drafted the amended ordinance and approved it as to form.

Recommendations/Actions: It is recommended that the City Council approve the first reading of the ordinance.

Attachments: Delineated and clean copies of the proposed ordinance.

(First Published in The Wichita Eagle on December 22, 2009)

December 2009

ORDINANCE NO. 48-580

AN ORDINANCE AMENDING SECTION 5.88.010 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO THE CRIME OF UNLAWFUL USE OF WEAPONS AND REPEAL OF THE ORIGINAL SECTION 5.88.010

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

Section 1. 5.88.010 of the Code of the City of Wichita, Kansas, shall read as follows:

- (1) Unlawful use of a weapon is knowingly:
 - (a) Selling, manufacturing, purchasing, possessing or carrying any bludgeon, sandclub, metal knuckles or throwing star, or any knife, commonly referred to as a switch-blade, which has a blade that opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife, or any knife having a blade that opens or falls or is ejected into position by the force of gravity or by an outward, downward or centrifugal thrust or movement;
 - (b) Carrying concealed on one's person, or possessing with intent to use the same unlawfully against another, a dagger, dirk, billy, blackjack, slungshot, nightstick, nunchucks, sap gloves, tomahawk, dangerous knife, straight-edged razor, stiletto or any other dangerous or deadly instrument of like character, except that an ordinary pocket knife with no blade more than four inches in length shall not be construed to be a dangerous knife or a dangerous or deadly weapon or instrument;
 - (c) Carrying unconcealed on one's person or in any vehicle under one's immediate control, with intent to use the same unlawfully against another, a dagger, dirk, billy,

blackjack, slungshot, nightstick, nunchucks, sap gloves, tomahawk, dangerous knife, straight-edged razor, stiletto or any other dangerous or deadly instrument of like character, except that an ordinary pocket knife with no blade more than four inches in length shall not be construed to be a dangerous knife or a dangerous or deadly weapon or instrument;

(d) Carrying any pistol, revolver or other firearm concealed on one's person, while on property open to the public, except when on one's land or in one's abode or fixed place of business;

(e) Carrying on one's person any unconcealed, loaded firearm, while on property open to the public, except when on one's land or in one's abode or fixed place of business;

(f) Carrying in any vehicle under one's immediate control, while on property open to the public, any loaded firearm, except when on one's land or in one's abode or fixed place of business;

(g) Carrying in any air, land or water vehicle an unloaded firearm that is not encased in a container which completely encloses the firearm;

(h) Carrying a loaded or unloaded firearm in a courtroom or within City Hall;

(i) Drawing a pistol, revolver, knife or any other deadly weapon upon any person.

(j) As used in this section, "throwing star" means any instrument, without handles, consisting of a metal plate having three or more radiating points with one or more sharp edges and designed in the shape of a polygon, trefoil, cross, star, diamond or other geometric shape, manufactured for use as a weapon for throwing.

(2) Subsections (1)(a), (b), (c), (d), (e), (f) and (g), (h), and (i) of this subsection shall not apply to or affect any of the following:

(a) Law enforcement officers, or any person summoned by any such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer;

(b) Wardens, superintendents, directors, security personnel and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of a crime, while acting within the scope of their authority;

(c) Members of the armed services or reserve forces of the United States or the Kansas National Guard while in the performance of their official duty; or

(d) Manufacture of, transportation to, or sale of weapons to a person authorized under (a) through (c) of this subsection to possess such weapons.

(e) Qualified law enforcement officers or qualified retired law enforcement officers pursuant to the Law Enforcement Officers Safety Act of 2004, 18 U.S.C. 926B and 18 U.S.C. 926C and amendments thereto.

(3) Subsection (1)(d), (e) and (f) of this section shall not apply to or affect the following:

(a) Watchmen, while actually engaged in the performance of the duties of their employment;

(b) Private detectives licensed by the state to carry the firearm involved while actually engaged in the duties of their employment;

(c) Detectives or special agents regularly employed by railroad companies or other corporations to perform full-time security or investigative service, while actually engaged in the duties of their employment; or

(d) The State Fire Marshal, the State Fire Marshal's deputies or any member of a fire department authorized to carry a firearm pursuant to K.S.A. 31-157 and amendments

thereto, while engaged in an investigation in which such fire marshal, deputy or member is authorized to carry a firearm pursuant to K.S.A. 31-157 and amendments thereto.

(e) Special deputy sheriffs described in K.S.A. 2001 Supp. 19-827, and amendments thereto, who have satisfactorily completed the basic course of instruction required for permanent appointment as a part-time law enforcement officer under K.S.A. 74-5607a and amendments thereto.

(4) Subsection (1)(i) of this section shall not apply to or affect historical reenactors and actors when engaged in performances and demonstrations. Provided, however, this subsection shall only apply to those performances and demonstrations which have been approved in advance in writing by the city manager or his designee.

(5) Subsection (1) (d), (e), (f), and (g) shall not apply to any person who sells, purchases, possesses or carries a firearm, device or attachment which has been rendered unserviceable by steel weld in the chamber and marriage weld of the barrel to the receiver and which has been registered in the national firearms registration and transfer record in compliance with 26 U.S.C. 5841 et seq. in the name of such person and, if such person transfers such firearm, device or attachment to another person, has been so registered in the transferee's name by the transferor.

(6) Subsections 1(d), 1 (f), and 1 (g) shall not apply to:

(a) any person carrying a concealed weapon as authorized by K.S.A. 2008 Supp., 75-7c01 through K.S.A. 75-7c17, and amendments thereto.

(b) the United States attorney for the district of Kansas, the attorney general, or any district attorney or county attorney, while actually engaged in the duties of their employment or any activities incidental to such duties; any assistant

United States attorney if authorized by the United States attorney for the district of Kansas and while actually engaged in the duties of their employment or any activities incidental to such duties; any assistant attorney general if authorized by the attorney general and while actually engaged in the duties of their employment or any activities incidental to such duties; or any assistant district attorney or assistant county attorney if authorized by the district attorney or county attorney by whom such assistant is employed and while actually engaged in the duties of their employment or any activities incidental to such duties. The provisions of this paragraph shall not apply to any person not in compliance with Chapter 92, Section 4, of 2009 Session Laws of Kansas, and amendments thereto.

(7) Subsection 1 (d) shall not apply to licensed hunters or fishermen, while engaged in hunting or fishing;

(8) It shall be a defense that the defendant is within an exemption.

(9) Any person who violates any of the provisions of this section within the corporate limits of the city shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed two thousand five hundred dollars or by imprisonment for not more than one year, or by both such fine and imprisonment.

(10) In addition to the penalty for violation of any of the provisions of this section, it shall be the duty of the municipal court judge:

(a) To order any weapon seized in connection with such violation which is not a firearm to be forfeited to the city and the same shall be destroyed or caused to be destroyed by the chief of police whenever the weapon is no longer needed for evidence;

(b) To order any weapon seized in connection with such violation when no longer needed for evidentiary purposes, shall, in the discretion of the trial court, be:

- (i) Destroyed:
- (ii) Forfeited to the Wichita Police Department for use within the police department, for sale to a properly licensed federal firearms dealer or for trading to a properly licensed federal firearms dealer by the police department for other new or used firearms or accessories for the Police Department's use; or
- (iii) Forfeited to the Kansas Bureau of Investigation for law enforcement, testing, comparison or destruction by the Kansas Bureau of Investigation forensic laboratory.

If weapons are sold as authorized above, the proceeds from any such sale shall be credited to the asset seizure and forfeiture fund of the Wichita Police Department. All transactions involving weapons disposed of under this subsection must have the prior approval of the city manager. All sales of weapons are subject to review by the city council;

(c) Any stolen weapon confiscated in connection with any violation of this section other than subdivision (a) of this subsection shall be returned to the person entitled to possession, if known, when the same is no longer needed for evidence. All other weapons shall be disposed of as provided in subsection (9)(a) and (b) of this section.

Section 2. The original of Section 5.88.010 of the Code of the City of Wichita, Kansas, is hereby repealed.

Section 3. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this _____ day of _____, 2009.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf
Director of Law and City Attorney

(First Published in The Wichita Eagle on _____)

December 2009

ORDINANCE NO. 48-580

DELINEATED

AN ORDINANCE AMENDING SECTION 5.88.010 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO THE CRIME OF UNLAWFUL USE OF WEAPONS AND REPEAL OF THE ORIGINAL SECTION 5.88.010

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

Section 1. 5.88.010 of the Code of the City of Wichita, Kansas, shall read as follows:

(1) Unlawful use of a weapon is knowingly:

(a) Selling, manufacturing, purchasing, possessing or carrying any bludgeon, sandclub, metal knuckles or throwing star, or any knife, commonly referred to as a switch-blade, which, ~~having the appearance of a pocket knife, also~~ has a blade that opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife, ~~or by other mechanical contrivance,~~ or any knife having a blade that opens or falls or is ejected into position by the force of gravity or by an outward, downward or centrifugal thrust or movement;

(b) Carrying concealed on one's person, or possessing with intent to use the same unlawfully against another, a dagger, dirk, billy, blackjack, slungshot, ~~slingshot~~, nightstick, nun-chucks, sap gloves, tomahawk, dangerous knife, straight-edged razor, stiletto or any other dangerous or deadly instrument of like character, except that an ordinary pocket knife with no blade more than four inches in length shall not be construed to be a dangerous knife or a dangerous or deadly weapon or instrument;

(c) Carrying unconcealed on one's person or in any vehicle under one's immediate control, with intent to use the same unlawfully against another, a dagger, dirk, billy, blackjack, ~~slingshot~~ slungshot, nightstick, nunchucks, sap gloves, tomahawk, dangerous knife, straight-edged razor, stiletto or any other dangerous or deadly instrument of like character, except that an ordinary pocket knife with no blade more than four inches in length shall not be construed to be a dangerous knife or a dangerous or deadly weapon or instrument;

(d) Carrying any pistol, revolver or other firearm concealed on one's person, while on property open to the public, except when on one's land or in one's abode or fixed place of business;

(e) Carrying on one's person any unconcealed, loaded firearm, while on property open to the public, except when on one's land or in one's abode or fixed place of business;

(f) Carrying in any vehicle under one's immediate control, while on property open to the public, any loaded firearm, except when on one's land or in one's abode or fixed place of business;

(g) Carrying in any air, land or water vehicle an unloaded firearm that is not encased in a container which completely encloses the firearm;

(h) Carrying a loaded or unloaded firearm in a courtroom or within City Hall;

(i) Drawing a pistol, revolver, knife or any other deadly weapon upon any person.

(j) As used in this section, "throwing star" means any instrument, without handles, consisting of a metal plate having three or more radiating points with one or more sharp edges and designed in the shape of a polygon, trefoil, cross, star, diamond or other geometric shape, manufactured for use as a weapon for throwing.

(2) Subsections (1)(a), (b), (c), (d), (e), (f) and (g), (h), and (i) of this subsection shall not apply to or affect any of the following:

(a) Law enforcement officers, or any person summoned by any such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer;

(b) Wardens, superintendents, directors, security personnel and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of a crime, while acting within the scope of their authority;

(c) Members of the armed services or reserve forces of the United States or the Kansas National Guard while in the performance of their official duty; or

(d) Manufacture of, transportation to, or sale of weapons to a person authorized under (a) through (c) of this subsection to possess such weapons.

(e) Qualified law enforcement officers or qualified retired law enforcement officers pursuant to the Law Enforcement Officers Safety Act of 2004, 18 U.S.C. 926B and 18 U.S.C. 926C and amendments thereto.

(3) Subsection (1)(d), (e) and (f) of this section shall not apply to or affect the following:

(a) Watchmen, while actually engaged in the performance of the duties of their employment;

(b) Private detectives licensed by the state to carry the firearm involved while actually engaged in the duties of their employment;

(c) Detectives or special agents regularly employed by railroad companies or other corporations to perform full-time security or investigative service, while actually engaged in the duties of their employment; or

(d) The State Fire Marshal, the State Fire Marshal's deputies or any member of a fire department authorized to carry a firearm pursuant to K.S.A. 31-157 and amendments thereto, while engaged in an investigation in which such fire marshal, deputy or member is authorized to carry a firearm pursuant to K.S.A. 31-157 and amendments thereto.

(e) Special deputy sheriffs described in K.S.A. 2001 Supp. 19-827, and amendments thereto, who have satisfactorily completed the basic course of instruction required for permanent appointment as a part-time law enforcement officer under K.S.A. 74-5607a and amendments thereto.

(4) Subsection (1)(i) of this section shall not apply to or affect historical reenactors and actors when engaged in performances and demonstrations. Provided, however, this subsection shall only apply to those performances and demonstrations which have been approved in advance in writing by the city manager or his designee.

(5) Subsection (1) (d), (e), (f), and (g) shall not apply to any person who sells, purchases, possesses or carries a firearm, device or attachment which has been rendered unserviceable by steel weld in the chamber and marriage weld of the barrel to the receiver and which has been registered in the national firearms registration and transfer record in compliance with 26 U.S.C. 5841 et seq. in the name of such person and, if such person transfers such firearm, device or attachment to another person, has been so registered in the transferee's name by the transferor.

(6) Subsections 1(d), ~~1(e)~~, 1 (f), and 1 (g) shall not apply to:

(a) any person authorized to carry carrying a concealed firearm pursuant to the Personal and Family Protection Act ~~weapon as authorized by K.S.A. 2008 Supp.~~, 75-7c01 through K.S.A. 75-7c187, and amendments thereto.

(b) the United States attorney for the district of Kansas, the attorney general, or any district attorney or county attorney, while actually engaged in the duties of their employment or any activities incidental to such duties; any assistant United States attorney if authorized by the United States attorney for the district of Kansas and while actually engaged in the duties of their employment or any activities incidental to such duties; any assistant attorney general if authorized by the attorney general and while actually engaged in the duties of their employment or any activities incidental to such duties; or any assistant district attorney or assistant county attorney if authorized by the district attorney or county attorney by whom such assistant is employed and while actually engaged in the duties of their employment or any activities incidental to such duties. The provisions of this paragraph shall not apply to any person not in compliance with Chapter 92, Section 4, of 2009 Session Laws of Kansas, and amendments thereto.

- (7) Subsection 1 (d) shall not apply to licensed hunters or fishermen, while engaged in hunting or fishing;
- (8) It shall be a defense that the defendant is within an exemption.
- (9) Any person who violates any of the provisions of this section within the corporate limits of the city shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed two thousand five hundred dollars or by imprisonment for not more than one year, or by both such fine and imprisonment.
- (10) In addition to the penalty for violation of any of the provisions of this section, it shall be the duty of the municipal court judge:

(a) To order any weapon seized in connection with such violation which is not a firearm to be forfeited to the city and the same shall be destroyed or caused to be destroyed by the chief of police whenever the weapon is no longer needed for evidence;

(b) To order any weapon seized in connection with such violation when no longer needed for evidentiary purposes, shall, in the discretion of the trial court, be:

(i) Destroyed:

(ii) Forfeited to the Wichita Police Department for use within the police department, for sale to a properly licensed federal firearms dealer or for trading to a properly licensed federal firearms dealer by the police department for other new or used firearms or accessories for the Police Department's use; or

(iii) Forfeited to the Kansas Bureau of Investigation for law enforcement, testing, comparison or destruction by the Kansas Bureau of Investigation forensic laboratory.

If weapons are sold as authorized above, the proceeds from any such sale shall be credited to the asset seizure and forfeiture fund of the Wichita Police Department. All transactions involving weapons disposed of under this subsection must have the prior approval of the city manager. All sales of weapons are subject to review by the city council;

(c) Any stolen weapon confiscated in connection with any violation of this section other than subdivision (a) of this subsection shall be returned to the person entitled to possession, if known, when the same is no longer needed for evidence. All other weapons shall be disposed of as provided in subsection (9)(a) and (b) of this section.

Section 2. The original of Section 5.88.010 of the Code of the City of Wichita, Kansas, is hereby repealed.

Section 3. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this _____ day of _____, 2009.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf
Director of Law and City Attorney

City of Wichita
City Council Meeting
December 15, 2009

TO: Mayor and City Council

SUBJECT: Ordinance appropriating the 2010 budget; ratifying the payment of claims against the 2009 budget

INITIATED BY: Department of Finance

AGENDA: New Business

Recommendation: Approve the Ordinance.

Background: Each year the City Council must appropriate and approve the spending of the next year's budget according to the approved budget and also authorize, approve and ratify the payments, which have occurred against the current year budget.

Analysis: Appropriated amounts for each fund have been established in the budget for fiscal 2010 for the payment of all claims and charges against each fund. Payments of all claims and charges against each fund shall be made by a combination of checks and warrants, drawn by the Director of Finance and counter-signed by the City Manager and Treasurer as provided by law. The payment of all claims and charges against respective accounts and funds provided in the budget for the year 2009 are also required to be authorized, ratified and approved.

Financial Considerations: None.

Goal Impact: The Internal Perspective is advanced by complying with state statutes and providing information to the Citizens of Wichita.

Legal Considerations: The Ordinance has been approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the City Council approve the passage of the Ordinance.

ORDINANCE NO. _____

AN ORDINANCE APPROPRIATING THE AMOUNTS SET UP IN EACH FUND IN THE BUDGET; PROVIDING FOR THE PAYMENT OF ALL CLAIMS AND CHARGES AGAINST THE ACCOUNTS PROVIDED FOR THEREIN; AND APPROVING AND RATIFYING THE PAYMENT OF ALL CLAIMS AGAINST THE ACCOUNTS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

SECTION 1. That there is hereby appropriated the amounts set up in each fund in the budget for the fiscal year 2010 for the payment of all claims and charges against each fund. Payments of all claims and charges against each fund shall be made by combination of checks and warrants, drawn by the Director of Finance and counter-signed by the City Manager and Treasurer as provided by law, provided, however, that such officers shall at all times comply with the provisions of the Budget Law and the Cash Basis Law of the State of Kansas.

SECTION 2. That the payment of all claims and charges against the respective accounts and funds provided in the budget for the year 2009 are hereby authorized, ratified and approved.

SECTION 3. It is hereby attested that in order to maintain the public services essential for the citizens of this city in the budget year 2010, it will be necessary to utilize property tax revenue in an amount exceeding the revenues expended in the budget year 2009. The estimated amount of increased property tax revenue is \$148,024.

SECTION 4. This Ordinance shall take effect and be in force from and after its passage and publication once in the official city paper.

PASSED by the Governing Body of the City of Wichita, Kansas, this _____ day of December, 2009.

Carl Brewer, Mayor

ATTEST: (SEAL)

Karen Sublett, City Clerk

Approved as to Form:

Gary Rebenstorf, City Attorney
and Director of Law

City of Wichita
City Council Meeting
December 15, 2009

TO: Mayor and Members of the City Council

SUBJECT: Revision to Chapter 6.04, Animal Control and Protection
(All Districts)

INITIATED BY: Environmental Services Department

AGENDA: New Business

Recommendation: Approve revisions to Chapter 6.04, Animal Control and Protection.

Background: The Environmental Services (ES) Department administers Title 6 of the City Code, which includes regulations for animal control and protection. In March 2009, the Council approved extensive changes to this chapter including amendments to allow flexibility with the animal rabies vaccination schedule and to impose restrictions on the ownership of pit bulls. The revised ordinance provided for a phased implementation process so that some regulations were effective July 1, 2009 and other provisions (pit bull restrictions) are effective January 1, 2010. This approach allowed for a reasonable time period for public compliance. At the time of passage, Council requested that the department return in a year to report to the Council on progress with enforcement. An ES letter provided to the Council on December 8, 2009 (attached), provided a 2009 Animal Services Dog Statistics Report (from Jan. - Oct.). The 2009 results indicated that pit bull activities are continuing to increase including those for pit bulls running at large, attacking and biting. During ten months of 2009, 100% of all dogs encountered by the Wichita Police Department requiring the use of a firearm (13) involved pit bulls (13).

Analysis: The revised Chapter 6.04 approved in March was an extensive modification so that during the year, areas for consistency and improvement were identified. Proposed changes to this chapter are shown in the attached delineated revised code, December 8, 2009 Chapter 6.04 Draft version and summarized in the attached chart, Summary - Proposed Modifications to Chapter 6.04. A clean version of the code changes is also attached. These revisions include among other things: 1) deletion of certain misdemeanor class animal fighting penalties that have been recently elevated to felony status by the State; 2) removal of a clause requiring an owner of a dangerous dog to name the City of Wichita as an additional insured; 3) establishment of a renewable cash or performance bond requirement payable by owners of dogs deemed dangerous and being held by the City pending appeal of dangerous dog determinations; 4) grandfathers those pit bulls that were qualified show dogs prior to January 1, 2010 by establishing a variance from the existing pit bull spay/neuter requirements so that they may continue to be utilized as show dogs; and 5) a new amendment to limit Animal Maintenance Permit (AMP) fee to \$100 per application and a provides for the recovery of administrative costs for processing AMP applications that are denied (retains 50% of the AMP fee amount). Other minor revisions are proposed to provide language consistency and clarity.

Goal Impact: The proposed ordinance revisions further the City Council's "Provide a Safe and Secure Community".

Financial Considerations: Revenue enhancements are proposed in the ordinance revision but it is unknown what actual revenues will be realized.

Legal Considerations: The Department of Law has approved the code revisions as to form.

Recommendations/Actions: It is recommended that the City Council adopt the ordinance and place it on first reading.

Attachments: ES Letter to Mayor/City Council dated December 9, 2009; 2009 Animal Services Dog Statistics (Jan. - Oct.); Proposed revision of Chapter 6.04 delineated and clean version, both dated 12/8/2009; a chart, Summary – Proposed Modifications to Chapter 6.04, December 2009.

First Published in The Wichita Eagle on _____

DATE

ORDINANCE NO.48-583

AN ORDINANCE AMENDING SECTIONS 6.04.010, 6.04.040, 6.04.045, 6.04.046, 6.04.048, 6.04.052. 6.04.60, 6.04.070, 6.04.140, 6.04.155 AND 6.04.157 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO ANIMALS AND REPEALING THE ORIGINALS OF SAID SECTIONS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

Section 1. Section 6.04.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

Sec. 6.04.010 Definitions.

As used in this chapter:

(a) *Abandoned cat* means a cat which has returned to the feral state or which does not have a collar.

(b) *Adequate care* means normal care and prudent attention to the needs and welfare of an animal, including that care normally needed to maintain good health of the animal, including clean and dry bedding and resting surfaces, grooming, removal of manure, and:

1. *Adequate food* means wholesome foodstuffs suitable for the animal provided at suitable intervals in a sanitary manner in quantities sufficient to maintain good health of the animal considering its age and condition; and

2. *Adequate health care* means the provision to an animal of all immunizations and preventive care required to maintain good health; space adequate to allow the animal to rest and exercise sufficient to maintain good health; and the provision to each sick, diseased or injured animal of necessary veterinary care or humane death; and

3. *Adequate shelter* means a structurally sound, properly ventilated, sanitary and weatherproof shelter suitable for the animal, considering the condition and age of the animal which provides access to shade from direct sunlight and regress from exposure to inclement weather conditions; and

4. *Adequate water* means a continual access to or access at suitable intervals to a supply of clean, fresh, potable water provided in a sanitary manner suitable for the condition of the animal.

(c) *Adult animal* means an animal that has reached sexual maturity. For the purposes of this title, unless otherwise specified, an animal will be considered to be an adult at five (5) months of age.

(d) *Animals* means all vertebrate and invertebrate animals such as, but not limited to, dogs, cats, bovine cattle, horses and other equines, hogs, goats, rabbits, sheep, chickens, ducks, geese, turkeys, pigeons, and other fowl or wild animals, reptiles, fish, or birds that have been tamed, domesticated or captivated.

Such term does not include exotic or dangerous wild animals, as defined by Chapter 6.08.

(e) *Animal fighting paraphernalia* means equipment, animals, or commodities designed or capable of use for the purpose of training animals to attack other animals, as in dogfighting or cockfighting, including but not limited to: animal treadmills, drugs for healing animals such as anti-inflammatories, antibiotics or steroids, spurs, equipment used to threaten animals for the purpose of training for aggressive behavior, and/or equipment used to strengthen animal bodies.

In determining whether an object is animal fighting paraphernalia, a court or other authority shall consider, in addition to all other logically relevant factors, the following:

1. Statements by an owner or person in control of the object concerning its use.
2. Prior convictions, if any, of an owner or person in control of the object under any state law or city ordinance relating to animal fighting, animal cruelty or gambling.
3. The proximity of the object, in time and space, to a direct violation of an animal fighting, animal cruelty or gambling statute or ordinance.
4. The proximity of the object, in time and space, to other objects also susceptible for use as animal fighting paraphernalia.
5. The existence of bloodstains or blood spatters on the object.
6. The manner in which the object is displayed for sale or is described in written material on the subject of animal fighting.
7. The existence and scope of legitimate uses for the object in the community.
8. Expert testimony concerning the object's use.
9. The proximity of the object, in time and space, to dogs showing evidence of wounds or scarring.

f. *Animal shelter* means the facility or facilities authorized to care for animals impounded or held under the authority of the ordinances of the City of Wichita or the State of Kansas.

g. *Attack* means violent or aggressive physical contact with a person or domestic animal or violent or aggressive behavior that confines the movement of a person, including, but not limited to, charging, cornering, chasing, or circling a person.

h. *Bite* means any actual or suspected abrasion, scratch, puncture, tear, bruise or piercing of the skin, caused by any animal, which is actually or suspected of being contaminated or inoculated with the saliva from the animal, directly or indirectly, regardless of the health of the animal causing such bite.

i. *Cat* means any of the small carnivorous mammal varieties of *Felis Catus* which are domesticated. Such term shall not include hybrid breeds of cats which have been bred to a wild animal.

j. *Cattery* means any premises where there is being maintained or harbored a total of five or more cats or more than two unspayed female cats, except veterinary hospitals. This term does not include foster homes operated under the auspices of rescue organizations licensed by the Kansas Department of Animal Health.

k. *City Treasurer* means the duly appointed treasurer of the city or his/her authorized representative.

l. *Commercial animal establishment* means any pet shop, animal day care, grooming shop, auction, riding school, stable, kennel, guard dog service, dog trainer or other business which keeps or maintains animals in stock for retail or wholesale trade or sale.

m. *Dangerous dog* means:

1. Any dog which has exhibited a vicious propensity toward persons or domestic animals and is capable of inflicting serious physical harm or death or damage to property; or
2. Any dog which, without provocation, attacks or bites, or has attacked or bitten a human being or domestic animal. This shall not apply if the victim was committing a willful criminal trespass on the property where the dog was harbored at the time of the attack or bite; or

3. Any dog owned or harbored primarily or in part for the purpose of dog fighting, or any dog trained for dog fighting; or
 4. Any dog which chases or menaces any person in an aggressive manner, except that a dog shall not be deemed dangerous if the complainant was committing a willful criminal trespass at the time.
 5. Any dog that poses a threat to public safety or constitutes a danger to human life or property based upon criteria described in Section 6.04.045, as determined by the Health Officer.
- n. *Defecate* means to excrete waste matter from the bowels.
- o. *Dog* means any animal which is of the species *Canis Familiaris*. Such term shall not include hybrid breeds of dogs which have been bred to a wild animal.
- p. *Dog breeder* means a person who raises or produces dogs or puppies for sale or profit.
- It is presumed that a person who advertises the sale of dogs or puppies or a person who owns two or more unaltered female dogs is a dog breeder. Such term shall include persons who are licensed by the State of Kansas as an Animal Dealer, Retailer Breeder, Animal Breeder, Hobby Breeder or Hobby Kennel. Such term shall include a person who owns one or two unaltered pit bulls.
- q. *Animal day care* means a commercial establishment that takes temporary possession of an animal, at the request of an owner, to provide safety, comfort and/or socialization of the animal.
- r. *Domestic animals* means all animals that have been domesticated, such as, but not limited to, dogs, cats, cattle, horses, swine, goats, rabbits, sheep, chickens, ducks, geese, turkeys, pigeons or other fowl.
- s. *Domestic animal structure* means all pens, houses or structures where domestic animals are confined, such as, but not limited to: hutches, cotes, lofts, kennels, dog runs, warrens, feed lots,

barns or other buildings and enclosures. The term does not apply to perimeter fencing surrounding the property.

t. *Exotic animal* means those animals not normally occurring in North America and animals of any species the majority of whose populations are wild.

u. *Ferret* means a domesticated, small, elongated carnivorous mammal which belongs to the Mustelidae Family (*Mustela putorius furo*).

v. *Foster care, group home or rescue* means a person or organization, whether for profit or non-profit, which provides temporary care for animals from a licensed animal shelter at a private residence. Temporary care is a period of time not to exceed six (6) months. Such term shall include foster, group and rescue homes operated under the auspices of rescue organizations licensed by the Kansas Animal Health Department.

w. *Fowl* means any domesticated or wild bird, including but not limited to: chickens, hens, ducks, geese, pheasants, turkeys, doves, pigeons, parrots, parakeet and exotic birds.

x. *Garbage* means the putrescible animal and vegetable waste resulting from the handling, preparation, cooking and consumption of food for human beings.

y. *Groomer* means a person or establishment which provides animal grooming services.

z. *Health Officer* means the Director of the City of Wichita Department of Environmental Services or authorized representative.

(aa) *Inhumane treatment* means any treatment to any animal which deprives the animal of necessary sustenance, including food, water and protection from the weather; any treatment such as overloading, overworking, tormenting; beating, mutilating, teasing or other abnormal treatment; or causing or allowing the animal to fight with any other animal.

- (bb) *Kennel* means any premises where there is being maintained a total of five or more adult dogs owned by the property resident.
- (cc) *Livestock* means any cow, ox or other bovine, goat, sheep, horse, ratites, donkey, swine, mule or other animal of similar or larger size.
- (dd) *Microchip* means a passive transponder which can be implanted in an animal and which is a component of a radio frequency identification (RFID) system.
- (ee) *Neighbor* means any person residing within two hundred feet (200') from the outermost property line of the property where a domestic animal is owned, kept or harbored.
- (ff) *Owner, keeper or harborer* means any person who possesses, harbors, keeps, feeds, shelters, maintains, offers refuge or asylum to any animal, or who professes to keeping, owning or harboring of such animal. In addition, any person who signs a receipt as owner, keeper or harborer for the return of an animal from any shelter or animal holding facility, shall be presumed to be the owner, keeper or harborer of the animal. A parent or legal guardian shall be deemed to be an owner, keeper or harborer of animals owned, kept or harbored upon their premises by minor children who are less than eighteen (18) years of age. Such term shall also include any person who exercises control over or is in possession of any such animal.
- (gg) *Person* means any individual, firm, association, joint stock company, syndicate, partnership, corporation, other state franchised business entity such as a professional association, limited liability company, or limited liability partnership, or other organization of any kind.
- (hh) *Picket* means attaching a leash, rope, chain, lead, tether or other similar apparatus or device to the body of an animal and another inanimate or immovable object for the purpose of confining the animal or limiting the movement of the animal.

(ii) *Pit Bull dog* is defined to mean any and all of the following dogs:

1. The Staffordshire Bull Terrier breed of dogs;
2. The American Staffordshire Terrier breed of dogs;
3. The American Pit Bull Terrier breed of dogs;
4. Dogs which have the appearance and physical characteristics of being predominately of the breeds of dogs known as Staffordshire Bull Terrier, American Pit Bull Terrier or American Staffordshire Terrier.

A dog which possesses five out of the following eight characteristics shall be considered to be a pit bull:

1. Head is medium length, with a broad skull and very pronounced cheek muscles, a wide, deep muzzle, a well-defined, moderately deep stop, and strong under jaw. Viewed from the front the head is shaped like a broad, blunt wedge.
2. Eyes are round to almond shaped, are low in the skull and set far apart.
3. Ears are set high. Un-cropped ears are short and usually held rose or half prick, though some hold them at full prick.
4. Neck is heavy and muscular, attached to strong, muscular shoulders.
5. Body is muscular, with a deep, broad chest, a wide front, deep brisket, well-sprung ribs, and slightly tucked loins.
6. Tail is medium length and set low, thick at the base, tapering to a point.
7. Hindquarters are well muscled, with hocks, set low on the legs.
8. Coat is a single coat, smooth, short and close to the skin. Pit bull puppies have the same characteristics, though in juvenile or adolescent form. Muscles, along with breadth and depth of

head and chest may be less developed. Specifically excepted from this definition is any dog with proof, by by a written certification from a veterinarian licensed by the State of Kansas, that the dog does not contain in its lineage any American Pit Bull Terrier, American Staffordshire Terrier or Staffordshire Bull Terrier.

(jj) *Premises* means a lot, plot or parcel of land including structures located thereon.

(kk) *Public nuisance* means any repeated acts of an animal that irritates, perturbs or damages rights and privileges common to the public or enjoyment of private property or indirectly injures or threatens the safety of a member of the general public. Such actions include, but are not limited to:

1. Damage to public or private property including, but not limited to: breaking, bruising, tearing up, digging up, crushing or injuring any lawn, garden, flower bed, plant, shrub or tree in any manner;
2. Rips any trash bag or tips any solid waste collection container which spills or scatters trash, debris, refuse or waste.
3. Repeatedly defecates upon any public place or upon premises not owned or controlled by the animal's owner, keeper or harbinger, provided that this definition shall not apply where such waste is immediately removed and properly disposed of by the owner of such animal.
4. Allowing or permitting an animal to be maintained in an unsanitary condition so as to be offensive to sight or smell.
5. Causes a condition which endangers public health or safety.

(ll) *Ratites* means all creatures of the ratite family that are not indigenous to this state, including but not limited to, ostriches, emus and rheas.

(mm) *Refuse* means all putrescible and non-putrescible waste materials (except animal body discharges) such as trash, garbage, dead animals, paper, cardboard, tin cans, grass, wood, metals, salvage or inert materials produced or accumulated in connection with the maintenance of domestic animals.

(nn) *Retail* means any transaction where the animal is sold to the final consumer.

(oo) *Running at large* means any animal, with the exception of a cat, that is not confined within a fenced enclosure or shelter capable of preventing the animal from exiting at will, unless under the control of a person, either by lead, cord, rope or chain; provided that an animal may be considered confined if it is on a leash, rope or chain which is sufficient to keep the animal on the premises where picketed in accordance with section 6.04.040 (e)(14). For the purposes of this chapter, an animal shall not be considered running at large when on the owner's property and confined by an operating electronic fencing system when the premises are clearly and prominently marked to show the existence of the electronic fencing system and the animal is equipped with the necessary and operating components of the system required to confine the animal to the owner's property. Further, a dog shall not be considered to be running at large when it is unleashed inside a dog park owned or operated by the City of Wichita.

(pp) *Sale or offer for sale* includes transfers by sale or exchange.

(qq) 'Sanitary' means clean, free from waste and free from infectious influences.

(rr) *Secure enclosure* means a locked enclosure or structure measuring at least 6 feet in width, 12 feet in length, and 6 feet in height, a secure top attached to the sides which provides proper protection from the elements for the dog, is suitable to prevent the entry of young children, and is designed to prevent the animal from escaping while on the owner's property, which has been

inspected and approved by the Health Officer. Such enclosure shall have a concrete or wire floor to prevent the dog from digging out or escaping from the enclosure.

(ss) *Service animal* means any animal recognized as a qualified service animal pursuant to the Americans with Disability Act of 1990. A qualified service animal is defined as, but not limited: to a dog which has been specially selected, trained and tested to perform a variety of tasks for persons with disabilities. These tasks include, but are not limited to: pulling wheelchairs, lending balance support, picking up dropped objects or providing assistance in, or to avoid, a medical crisis or to otherwise mitigate the effects of a disability. The presence of a dog for comfort, protection or personal defense does not qualify a dog as being trained to mitigate an individual's disability and, therefore, does not qualify the dog as a service dog.

(tt) *Stockyard* means a public terminal stockyard posted by the packers and stockyards divisions of the United States Department of Agriculture.

(uu) *Unaltered* means an animal which has not been surgically sterilized.

(vv) *Veterinarian* means a doctor of veterinary medicine licensed by the State of Kansas.

(ww) *Veterinarian hospitals* means a domestic animal hospital operated by a doctor of veterinary medicine, licensed by the State.

(xx) *Vicious propensity* means a known tendency or disposition to approach any individual or domestic animal in an attitude of attack when there is no provocation.

(yy) *Waste* or *wastes* means manure or the bodily discharge of all domestic animals, spilled feed or unconsumed feed and liquid cleaning wastes, including suspended solids resulting from cleaning operations.

(zz) *Wild animal* means any species that has established breeding populations currently within North America, which is self sufficient in the natural environment, and the majority of whose populations are not domesticated.

Section 2. Section 6.04.040 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

Sec. 6.04.040. Control and protection of animals in general.

(a) Any owner, keeper or harbinger of any animal, other than cats, found running at large within the corporate limits of the city shall be deemed guilty of a misdemeanor. Knowledge or intention on the part of the owner, keeper or harbinger shall not be elements of this offense. The Health Officer may seize, impound and cause to be destroyed any such animal, including those animals not within the definitions of the Kansas Pet Animal Act, using the procedures set out at K.S.A. 47-1710. The Health Officer may return the animal to its rightful owner, keeper or harbinger upon request and may require the payment of a service charge and a boarding fee for days spent in confinement at the shelter prior to return of the animal. If any animal impounded for any reason is determined by the Health Officer to require confinement separate from other like animals in order to protect the health and well being of that animal, staff, the public, or other animals being housed at the animal holding facility due to any aggressive behavior and/or any disease or medical conditions, the boarding fee for such animal shall be twice the normal boarding fee established by the animal shelter. Any person who is convicted of the charge of animal running at large shall be punished as set forth below:

1. Upon a first conviction, a fine of not less than \$50.00 nor more than \$1,000.00 shall be assessed.
 2. Upon a second conviction a fine of not less than \$100.00 nor more than \$1,000.00 shall be assessed.
 3. Upon a third or subsequent conviction, a fine of not less than \$200.00 nor more than \$1,000.00 shall be assessed and the owner must appear in Municipal Court.
- (b) In addition to the penalties set forth in paragraph (a), the owner, keeper or harborer of any unaltered dog that has been impounded for running at-large shall be required to:
1. Have an identification microchip implanted in the dog traceable to the current owner, and registered with the City of Wichita, and
 2. Have the dog surgically sterilized by a licensed veterinarian within thirty days of redemption of said dog, at his or her own expense. It shall be a violation of this ordinance to fail to have the dog surgically sterilized, or provide proof from a licensed veterinarian that said dog has previously been surgically sterilized, or has been surgically sterilized and micro-chipped within thirty days after redemption of said dog as indicated in this ordinance, or
 3. The owner, keeper or harborer may maintain the aforementioned dog intact by paying an additional unaltered animal fee, the amount of which shall be established by the Health Officer, to redeem such dog from the Animal Shelter. Such dog may be maintained intact provided that the dog is not found to be running at large on any subsequent occurrence within the dog's lifetime.
 4. For any dog required to be surgically sterilized, the Health Officer shall collect payment for and issue a spay/neuter voucher at the time of the animal's redemption, and the owner, keeper or harborer shall provide documentation of the sterilization upon completion. Such voucher shall

remain valid for thirty (30) days. Any owner,keeper or harborer failing to provide documentation of the sterilization procedure within thirty days of impoundment shall be deemed guilty of a misdemeanor. If the dog's owner had a valid dog license, such owner shall not receive a refund of the licensing fees paid for the altering or micro chipping of the dog. Upon the renewal of the license, the amount will be changed to reflect the altering and micro chipping of the dog.

(c) Upon the second occurrence of any intact dog impounded by the Health Officer for running at large, the owner, keeper or harborer of such dog shall be required to have the animal surgically sterilized by a licensed veterinarian within thirty days of redemption of said dog at his or her own expense. For any animal required to be surgically sterilized, the Health Officer shall collect payment for and issue a spay/neuter voucher at the time of the animal's redemption, and the owner, keeper or harborer shall provide documentation of the sterilization upon completion. Any owner, keeper or harborer failing to provide documentation of the sterilization procedure within thirty days of impoundment shall be deemed guilty of a misdemeanor.

(d) Animals which are kept on the premises of any pet store shall not be allowed, by the storeowner or any employee, to run at large inside the store or on the external premises of the pet store during business hours, and no person shall allow any animal under their care or control to run at large on the premises of any store during business hours. This provision shall not apply to animals participating in supervised training classes within an enclosed area of the store.

(e) It is unlawful for any person to:

1. Kill any squirrel or songbird within the corporate limits of the city; provided, that it shall be permissible for the Health Officer to kill squirrels, skunks, birds, or other animals that have become so numerous as to cause destruction or nuisance to property or in the event of disease

occurring among such squirrels, skunks, birds, or other animals that may be considered contagious to human beings;

2. Interfere with or molest an animal used by the police or fire department of the city or other governmental agency or department in the performance of its lawful functions and duties or interfere with the handler of such animal in such a way that the handler is deprived of or inhibited in his control of such animal;

3. Own, maintain, or have in his or her possession animal fighting paraphernalia;

4. Own, keep or harbor on one's premises any animal, by a person convicted of animal fighting, pursuant to K.S.A. 21-4315 or convicted of cruelty to animals as defined by Section 6.04.035 of the Code of the City of Wichita or K.S.A. 21-4310 and amendments thereto.

5. Own, keep or harbor any animal, which, by loud, frequent, excessive or habitual barking, howling, yelping or other noise or action, unreasonably interferes with the use or enjoyment of property of any person of reasonable sensibilities residing in or occupying the area. To effect legal relief, persons so affected directly may sign a complaint at the Department of Environmental Services or contact the Wichita Police Department to file a report regarding such nuisance.

6. Allow any unspayed female dog in season to be in an area where there is access by an unconfined male dog;

7. Allow an unconfined male dog in an area where there is access to any unspayed female dog in season;

8. Own, keep or harbor a dog over five months of age within the corporate limits of the city without such dog having a current vaccination against rabies performed by a veterinarian, and the owner thereof securing an annual license for such dog issued by the City Treasurer. The Director

of Environmental Services shall have the authority to establish appropriate licensing fees for such animals.

9. Own, keep or harbor a cat over five months of age within the corporate limits of the city without such cat having a current vaccination against rabies performed by a veterinarian licensed by the State of Kansas.

10. Sell or offer for sale, barter or give away any living baby chicks, rabbits, ducklings, or other fowl except pigeons, under two months of age or to sell, offer for sale, barter, give away or display animals or fowl as specified in this subsection which have been dyed, colored or otherwise treated so as to impart to them an artificial or unnatural color; provided, however, that this section shall not be construed to prohibit the sale of animals or fowl, as specified in this subsection, in proper brooder facilities by hatchers or persons engaged in the raising and selling of such animals and fowls for recognized animal husbandry or commercial purposes;

11. Own, keep, or harbor, sell or offer for sale, barter or give away any animal whose possession is prohibited by federal or state law; or any exotic animal as defined in by this title. This section shall not apply to: tropical or other fishes; birds, except those prohibited by federal or state law; animals such as gerbils, rats, mice, hamsters, guinea pigs, and ferrets; small mammals raised for harvesting of fur salable into an existing market, such as chinchillas, nutria and mink; nonpoisonous amphibians and reptiles, not including pythons, anacondas, boa constrictors, monitor lizards, iguanas, alligators, caiman, crocodiles and turtles. This section shall not apply to exhibitions authorized by and conducted in accordance with Chapter 6.08.

12. Continuously picket a dog for more than one continuous hour, except that picketing of the same dog may resume after a hiatus of three continuous hours. A dog may not be picketed for a total time period exceeding three hours, in any twenty-four-hour period.

For the purpose of picketing a dog, a chain, leash, rope, or tether shall be at least 10 feet in length.

(i) A chain, leash, rope, collaring device, tether, or any assembly or attachments thereto used to picket a dog shall not weigh more than one-eighth (1/8) of the animal's body weight, or due to weight, inhibit the free movement of the animal within the area picketed.

(ii) Dogs shall be picketed in such a manner as to prevent injury, strangulation, or entanglement on fences, trees, or other man made or natural obstacles;

(iii) It is unlawful to attach chains or other tether restraint implements directly to a dog without the proper use of a collar, harness, or other device designed for that purpose and made from a material that prevents injury to the animal.

13. Permit or allow any animal to be a public nuisance.

14. Own, keep or harbor more animals than is permitted by the requirements of this title.

(f) Health Officers and other law enforcement officers may issue the owner or owners of animals creating a public nuisance, as defined in this title, a citation to appear in municipal court to answer the offense charged. To effect legal relief, persons affected directly may sign a complaint at the Department of Environmental Services or contact the Wichita Police Department to file a report regarding such nuisance.

Section 3. Section 6.04.045 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

Sec. 6.04.045. Dangerous dog--Determination--Notice and hearing--Confinement or destruction.

a) The Health Officer may declare a dog to be dangerous based on:

1. The nature of any attack committed or wound inflicted by the animal;
2. The past history and seriousness of any attacks or wounds inflicted by the animal;
3. The potential propensity of the animal to inflict wounds or engage in aggressive or menacing behavior in the future;
4. The conditions under which the animal is kept and maintained which could contribute to, encourage, or facilitate aggressive behavior, such as, but not limited to, allowing the animal to run at large, tethering in excess of legal limits as defined in this chapter, physical property conditions, presence of young children, the elderly, or infirm within or residing near the home, any past violations of this chapter, and/or failing to provide proper care, food, shelter, or water.

If the Health Officer determines that the animal is dangerous, he or she will determine an appropriate disposition based on the known facts and consistent with the provisions of this chapter. The Health Officer may impound the dog and shall notify the owner of such determination by personal service, residential service at the person's usual place of abode by leaving a copy of the notice with some person of suitable age and discretion residing therein, or by certified mail addressed to the owner's last known address, or addressed to the location where the dog is maintained. Service by certified mail, shall request return receipt, with instructions to the delivering postal employee to show to whom delivered, the date of delivery, and address where delivered. Service of process by certified mail shall be considered obtained upon the delivery of the certified mail envelope. If the certified mail envelope is returned with an endorsement showing refusal of delivery, the Health Officer shall send a copy of the notice to the defendant by ordinary,

first class mail. This first class mailing shall be evidenced by a certificate of mailing. Service shall be considered obtained upon the mailing of this additional notice by first class mail. The owner of a dog declared dangerous may request an administrative review of the determination by filing a written request with the Health Officer within ten days of receipt of such notification.

(b) The Health Officer will conduct a hearing within ten days of receipt of the owner's request.

At such hearing, testimony may be offered by the owner of the dog, the Health Officer, victims of any bite or attack, neighbors or other affected persons, and veterinarians concerning the vicious propensity of the dog. In making a determination, the Health Officer shall consider the factors listed in subsections (1) through (4) above. It shall be an affirmative defense that at the time of a bite, attack, or threatening behavior:

1. The dog was actively being used by a law enforcement official for legitimate law enforcement purposes; or
2. The threat, injury, or damage was sustained by a person:
 - (i) Who was committing, at the time, a criminal trespass or other tort upon the premises lawfully occupied by the owner of the dog; or
 - (ii) Who was provoking, tormenting, abusing, or assaulting the dog or who can be shown to have repeatedly, in the past, provoked, tormented, abused or assaulted the dog; or
 - (iii) Who was committing or attempting to commit a crime; or
3. The dog was responding to pain or injury.

If the Health Officer determines that the dog is dangerous, he or she shall determine an appropriate disposition based on the facts determined at the hearing and the provisions of this chapter, and will notify the owner in writing of the outcome of the hearing within five business

days. The owner may appeal the hearing outcome as provided for in Section 6.04.210. During the appeal process, the owner, keeper or harbinger of such animal shall be responsible for the cost of keeping such animal in the Animal Shelter. The owner, keeper or harbinger of such animal can file a renewable, non-refundable, cash or performance bond with the Animal Shelter where the animal is being held, within the 10 day appeal period, in an amount equal the cost of care and treatment of the animal for thirty (30) days. Said cash or performance bond shall be renewable for an additional thirty (30) days and each successive thirty (30) days the animal is held by Animal Services during the pendency of the appeal. Payment of said renewal shall be within 5 days of the running of the previous thirty (30) day period. If said cash or performance bond, or its renewal, is not tendered to the Animal Shelter within the time specified above, then the Health Officer shall have immediate ownership of such animal and shall determine the disposition of such animal. Absent such appeal, the Health Officer may pick up and cause the animal to be destroyed, or in lieu of such destruction he or she may permit the confinement of the animal in a manner and location that he or she deems appropriate or as provided in Section 6.04.046

Section 4. Section 6.04.046 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

Sec. 6.04.046. Dangerous dog--Failure to confine--Destruction and defenses.

(a) It is unlawful for an owner, keeper or harbinger of a dangerous dog to permit the dog to be outside an approved or secure enclosure unless the dog is restrained by a substantial chain or leash and under physical restraint by a responsible person who is eighteen years of age or older and possesses sufficient strength for physical control of the animal for the purpose of

transportation to and from a veterinarian for medical treatment. In such event, the dangerous dog shall be securely muzzled and restrained with a chain or leash not exceeding four (4) feet in length, and shall be under the direct control and supervision of the owner, keeper or harbinger of the dangerous dog. The muzzle shall be made and used in a manner that will not cause injury to the dog or interfere with its vision or respiration, but shall prevent it from biting any human or animal.

(b) Secure or approved enclosures required under this section must be approved by the Health Officer and be adequately lighted and kept in a clean and sanitary condition.

(c) The owner, keeper or harbinger shall allow the Health Officer access to the property where the dangerous animal is being harbored to facilitate inspections and insure compliance for the duration of the life of the animal.

(d) The owner, keeper or harbinger of any dog that has been determined to be dangerous shall be required to have the animal surgically sterilized by a licensed veterinarian within thirty days of the dangerous animal determination, at his or her own expense. For any animal required to be surgically sterilized, the Health Officer shall collect payment for and issue a spay/neuter voucher at the time of the animal's redemption, and the owner, keeper or harbinger shall provide documentation of the sterilization upon completion. If the dog's owner had a valid dog license, such owner shall not receive a refund of the licensing fees paid for the altering or micro chipping of the dog. Upon the renewal of the license, the amount will be changed to reflect the altering and micro chipping of the dog.

Any owner, keeper or harbinger failing to provide documentation of the sterilization procedure as required by this section shall be deemed guilty of a misdemeanor.

(e) The owner, keeper or harbinger of any dog that has been determined to be dangerous shall be required to have a microchip, traceable to the dangerous dog and the current owner, inserted into the dog and copies of documentation of said procedure available for review by the Health Officer. If the dog's owner had a valid dog license, such owner shall not receive a refund of the licensing fees paid for the altering or micro chipping of the dog. Upon the renewal of the license, the amount will be changed to reflect the altering and micro chipping of the dog.

Any owner, keeper or harbinger of a dangerous dog who fails to comply with this provision shall be deemed guilty of a misdemeanor.

(f) It is unlawful for anyone having prior felony convictions defined in articles 34, 35, 36, and 43 of Chapter 21, and article 41 of Chapter 65 of the Kansas Statutes Annotated to possess, harbor, own or reside on any premises with a dangerous dog.

(g) It shall be unlawful for any person to:

(1) harbor, keep or maintain a dangerous dog on property not owned by the person without the written consent of the land owner; or

(2) sell, barter or give away to another person a dog which has been deemed dangerous; or

(3) own, keep or harbor more than two dogs which have been declared dangerous by this title.

(h) Should a previously determined dangerous dog be found running at large in violation of this section attack or inflict injury upon any person, the judge of the Municipal Court shall, in addition to any other penalty provided in Section 6.04.190, order the dog destroyed. Provided, however, the judge of the Municipal Court may, at his or her discretion, consider whether the attack or injury was sustained by a person who, at the time, was committing a criminal trespass or other tort upon the premises of the owner of the dog, or was tormenting, abusing, or assaulting the dog,

or has, in the past, been observed or reported to have tormented, aroused, or assaulted the dog or was committing or attempting to commit a crime.

Section 5. Section 6.04.048 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

Sec. 6.04.048. Registration and insurance.

(a) The owner, keeper or person harboring a dangerous dog shall annually register the dangerous dog with the Health Officer on such forms designated by the Health Officer, and shall have a microchip, traceable to the current owner of the dog, inserted into the dog. The owner, keeper or harborer shall complete an application and shall pay a \$100.00 annual registration fee to the City of Wichita and shall pay all costs associated with the microchip procedure. If the dog's owner had a valid dog license, such owner shall not receive a refund of the licensing fees paid for the altering or micro chipping of the dog. Upon the renewal of the license, the amount will be changed to reflect the altering and micro chipping of the dog.

The owner, keeper or person harboring a dangerous dog shall notify the Health Officer in writing a minimum of seven days prior to any change in the address of the owner, keeper or person harboring the dog or the location of the dangerous dog. Any owner, keeper or harborer of a dangerous dog who fails to comply with this provision shall be deemed guilty of a misdemeanor.

(b) The owner, keeper or person harboring a dangerous dog required to be registered under this Section shall maintain liability insurance in the amount of one hundred thousand dollars for each such dog against the potential injury or damage liabilities and hazards associated with the ownership or possession of such dog. The owner or person harboring a dangerous dog shall file

with the Health Officer a certificate of insurance reflecting the required minimum insurance. Any owner, keeper or harbinger of a dangerous dog who fails to comply with this provision shall be deemed guilty of a misdemeanor.

Section 6. Section 6.04.052 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

Sec. 6.04.052. Restrictions on the ownership of Pit Bulls.

(a) All adult pit bulls within the City of Wichita are required to have an identification microchip implanted in the dog traceable to the current owner and registered with the City of Wichita. Such microchip information shall be included in the dog's annual license application with the City of Wichita. The owner, keeper or harbinger shall pay all costs associated with the microchip procedure.

(b) It shall be unlawful for any person to own, keep or harbor an adult unaltered pit bull, unless such person is licensed as a dog breeder pursuant to Section 6.04.155. No licensed dog breeder shall own, keep or harbor more than two unaltered adult pit bulls. Such dogs must be micro-chipped as required by this title. The provisions of this section shall not apply to any unaltered pit bull which was located within the City of Wichita as of July 1, 2009, and such dog was being utilized as: (1) a service dog to accommodate an individual with a disability recognized by the Americans with Disabilities Act, or (2) a show dog which has been certified to have been shown in a qualified show by December 31, 2009 . No person shall own more than two such service dogs or show dogs, unless otherwise exempted in this title. Any person who owns such a show dog shall be required by March 31, 2010 to obtain a waiver from the Health Officer in order to retain the unaltered status of the pit bull. Such waiver shall be renewed on an annual basis under the

guidelines specified by the Health Officer and shall cost the sum of \$50.00 per waiver per year.

Waivers can be revoked by the Health Officer pursuant to the provisions of 6.04.157. Any such service dog or show dog must be micro-chipped as required by this title. Sterilization of a pit bull described in this section, shall not be required upon certification, presented to the Director of Environmental Services, by a veterinarian licensed by the state of Kansas, that such sterilization would be injurious to such dog due to its health or age.

(c) It shall be unlawful for any person to own, keep or harbor more than two pit bulls unless otherwise exempted in this title.

(d) It shall be unlawful for more than two adult pit bulls, to be owned, kept, or harbored on the same premises or dwelling.

(e) Any person who owns a pit bull, as of July 1, 2009, shall have six months thereafter, to microchip and surgically sterilize such animal or apply for a breeder's license pursuant to this title, unless exempted under section (b) above. Sterilization of the pit bull shall not be required upon certification, presented to the Director of Environmental Services, by a veterinarian licensed by the State of Kansas that such sterilization would be injurious to such dog due to its health or age.

(f) Any person who had a current animal maintenance permit or variance for three or more pit bulls, at the time of passage of the ordinance shall be permitted to keep, but not replace such dogs until their number equals no more than two dogs. Such dogs must be registered, micro-chipped and surgically sterilized in accordance with this title, unless otherwise exempted within this title.

(g) Any person aggrieved by the determination of the Health Officer that a dog is a pit bull as defined by Section 6.04.010 of this title, shall have the right to appeal such determination as set forth in Section 6.04.158.

- (h) The provisions of this section shall not apply to dogs which are temporarily located within the City of Wichita for participation in dog shows which are sanctioned by the American Kennel Club, United Kennel Club, the Wichita Kennel Club or the American Dog Breeders Association., or unless otherwise recognized by the Health Officer.
- (i) Any individual who fails to comply with the requirements of this section shall be guilty of a misdemeanor.

Section 7. Section 6.04.060 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

Sec. 6.04.060. Animal bite violations.

(a) No person who owns, possesses, harbors or exercises control over any animal shall do the following:

1. Permit or allow the animal to attack or bite any person or domestic animal not on the premises of such owner, keeper or harborer;
2. Permit or allow the animal to attack or bite any person or domestic animal upon the premises of the residence of such owner, keeper or harborer upon the premises of any business establishment not then open to the public. It is an affirmative defense to this paragraph if such premises are previously posted at each entrance with a prominent and conspicuous sign warning all persons of the animal, and the animal is confined in a proper enclosure. It is also an affirmative defense to this paragraph that the attack or bite by the animal was necessary to prevent or apprehend a person engaged in committing an act of violence, robbery, theft or other crime upon the property;

3. Permit or allow the animal to attack or bite any person or animal upon the premises of any business establishment that is open to the public. It is an affirmative defense to this paragraph that the attack or bite by the animal was necessary to prevent or apprehend a person engaged in committing an act of violence, robbery, theft or other crime upon the property.

(b) For purposes of this section, the word "permit" shall mean allow or let happen. Knowledge or intention on the part of the person who owns, possesses, harbors or exercises control over the animal shall not be elements of this offense.

(c) The provisions of this section shall not apply to any law enforcement officer who uses an animal while engaged in law enforcement activities, nor to any owner, keeper or harbinger of any animal which attacks or bites a person engaged in physically attacking or striking such owner, possessor or keeper or harbinger.

(d) Penalties for violation of this section:

1. Upon a first conviction of any violation of the provisions of this section, a minimum fine of \$150.00 shall be assessed.

2. Upon a second conviction within a twelve-month period, of any violation of the provisions of this section, a minimum fine of \$250.00 shall be assessed.

3. Upon a third or subsequent conviction, of a violation of any provisions of this section, a minimum fine of \$500.00 shall be assessed. In addition to the minimum fines set forth above, the Municipal Court Judge may impose a term of imprisonment not to exceed six months, and a fine not to exceed one thousand dollars.

Section 8. Section 6.04.070 of the Code of the City of Wichita, Kansas, is hereby

amended to read as follows:

Sec. 6.04.070 Procedures on retention, observation and disposition of animals which have bitten persons or other animals.

- (a) The owner of any animal, which has been determined by the Health Officer to have bitten a person or another animal shall confine the animal as directed by the Health Officer or surrender such animal to the Health Officer for rabies observation. The owner, keeper or harborer shall be responsible for the payment of any cost of such confinement and any additional fees relative to the confinement or maintenance of the animal. Any costs and/or additional fees assessed by the Health Officer shall be paid by the owner, keeper or harborer prior to the dog's release.

Section 9. Section 6.04.140 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

Sec. 6.04.140. Vaccination and identification tags.

- (a) The veterinarian administering the rabies vaccination shall issue a metallic tag for the particular dog vaccinated, on which tag shall be distinctly marked the veterinarian's name or veterinary clinic's name, address, and tag identification number. The year of issuance also shall be distinctly marked, which shall be the same as the year of vaccination or rabies certification for such animal. A new vaccination tag shall be issued in accordance with the procedures established in 6.04.110. The owner of any dog which is determined by the Health Officer to be running at large while not wearing a collar with identification consisting of the owner's

name and current address, or if such dog is over five months old, a current rabies vaccination tag, is guilty of a misdemeanor.

Section 10. Section 6.04.155 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

Sec. 6.04.155. Dog breeder license; breeder inspections.

(a) No person shall be a dog breeder, as defined by Section 6.04.010, unless such person is properly licensed by the City of Wichita as a breeder.

(b) All dog breeders, shall make an application for, and obtain an annual dog breeder's license as established and described by this section.

1. An application for a breeder's license shall be obtained from the City Treasurer's Office, Environmental Services, Animal Services or the City of Wichita's website. The application shall contain the following information:

- a. The name, date of birth and address of the applicant;
- b. The name, breed, color, sex and age of all dogs owned by the applicant;
- c. Documentation that all animals are properly vaccinated and licensed;
- d. Name and address of the licensed veterinarian who is responsible for the care and treatment of the animals;
- e. A signed statement by the applicant that the information is true and correct;
- f. The permanent ID or microchip number of all animals owned, if available;
- g. A statement as to whether there is a fenced yard or fenced run available for the confinement of the dogs.

h. A statement as to whether the applicant has ever had a license suspended or revoked which was issued by the State of Kansas pursuant to the Kansas Pet Animal Act. Such statement shall contain the date of any such suspension or revocation.

i. The zoning classification for the premises where the animals will be maintained.

j. A copy of any current license issued to the applicant by the State of Kansas pursuant to the Kansas Pet Animal Act.

2. The Health Officer is empowered to establish administrative requirements for obtaining dog breeder licenses. Application forms and administrative requirements can be obtained through Animal Services, Environmental Services, City Treasurer, or the City website.

(c) Approval of dog breeder licenses shall be contingent upon the applicant's compliance with all administrative requirements set forth by the Health Officer including, but not limited to, proper veterinary care, health certification of breeding stock and offspring, and compliance with all applicable requirements, and/or regulations of the City of Wichita and the State of Kansas.

(d) The Health Officer may refuse to approve issuance or renewal of, or revoke, a breeder's license for one or more of the following conditions:

1. Failure of the applicant to provide proof that the animals are properly licensed and vaccinated;

2. The making of any false statement as to any material matter in the application for a license, or a license renewal, or in a hearing concerning the license;

3. Violation by the applicant of a provision of this title, the Kansas Pet Animal Act or any state or federal law relating to the care and treatment of animals;

4. Suspension or revocation of a license issued by the State of Kansas pursuant to the Kansas Pet Animal Act ; or

5. The applicant has a history of allowing animals to run loose or escape, has otherwise been found to be neglectful, has had an animal identified as a nuisance, or has previously been determined to have violated the provisions of this title.

(e) No breeder's license shall be approved or renewed for premises zoned residential by the Wichita/Sedgwick County Unified Zoning Code.

(f) No breeder's license shall be approved for an individual who owns more than two unaltered pit bulls, unless otherwise exempted within this title. If the Health Officer refuses to issue or renew a license under this section, such individual shall have the appeal rights established by Section 6.04.158.

(g) The fee for a breeder license is established at fifty dollars annually. Such licenses shall expire one year from the date of issue. The City Treasurer shall impose a penalty of fifty dollars annually on all delinquent license renewals beginning thirty days following the expiration of the previous license. Failure by a person to obtain a breeder license as required by this section shall constitute a misdemeanor. Conviction of two or more violations of this code within a two-year period may result in revocation of the breeders' license. The individual shall be precluded from obtaining a breeder's license for a period of twenty-four (24) months following the revocation.

(h) All places and premises by licensed breeders or persons seeking approval for a breeder license as described by this chapter shall be open during reasonable hours for inspection by the Health Officer in order to ensure the health, safety, and welfare of the animals on said property. If upon such an inspection by the Health Officer any person who has been granted or applied for a

license is found violating any of the regulations prescribed in this chapter, or any provisions within the Unified Zoning Code, or any administrative regulation established by the Health Officer, such person shall be given a written notice of such violation. If such violation or violations of this code do not or can not cease within twenty-four hours of such notification, the permit, or license may be revoked or canceled by action of the Health Officer, pursuant to the procedures set forth in Section 6.04.159 of this code.

(i) It shall be unlawful for any breeder of pit bulls, as defined by this title, to engage in the breeding of such animals with an owner, keeper or harbinger of a pit bull involved in the breeding process who is not also licensed as a breeder.

(j) Upon a first conviction of a violation of the provisions of this section, a minimum fine of \$100.00 shall be imposed. Upon a second or subsequent conviction, of a violation of the provisions of this section, a minimum fine of \$250.00 shall be imposed. In addition, the Municipal Court Judge may impose a term of imprisonment not to exceed six months and/or a fine not to exceed one thousand dollars.

Section 11. Section 6.04.0157 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

Sec. 6.04.157. Maximum number of dogs and cats and maintaining livestock.

(a) No person shall own, keep or harbor upon any premises or property, or in any dwelling of any type within the city:

1. livestock;
2. more than two dogs;
3. more than two cats;

4. more than two rabbits;
5. more than three fowl; or
6. more than three pigeons;

unless such person has a current Animal Maintenance Permit or variance issued by the Health Officer authorizing the maintenance of such animals. The provisions of this section shall not apply to common carriers transporting domestic animals to or through the City. Permits shall not be required for indoor non-commercial maintenance of fish, nonpoisonous amphibians and reptiles allowed by Section 6.04.040, birds and small rodents. Any individual who fails to comply with the requirements of this section shall be deemed guilty of a misdemeanor.

(b) No person shall keep, own, or harbor upon any premises or property or in any dwelling of any type within the city, more than three different kinds of domestic animals or livestock unless such person has a current animal maintenance permit or variance issued by the Health Officer authorizing the maintenance of such animals. Any individual who fails to comply with the requirements of this section shall be deemed guilty of a misdemeanor.

1. Any person, rescue organization or foster care home, who desires to own, keep, or harbor livestock, or more than two dogs or more than two cats or more than two rabbits, or more than three fowl or pigeons, shall apply the City of Wichita for an 'animal maintenance permit' that shall permit the applicant to own, keep or harbor the animals specifically allowed in that permit.

2. Any person, rescue organization or foster care home, who desires to own, keep or harbor more than three different kinds of domestic animals shall apply with the City of Wichita for an animal maintenance permit that shall permit the applicant to own, keep or harbor more than three different kinds of domestic animals.

TABLE 1:

KIND OF ANIMAL	MINIMUM REQUIRED FOR PERMIT	MAXIMUM ALLOWED WITH PERMIT	PERMIT FEE
Dogs, excluding pit bulls	3	4	\$25.00
Cats	3	4	\$25.00
Fowl	4	12 (25 pigeons)	\$25.00
Sheep	1	One animal per acre	\$100.00
Goats--(Nannies only)	1	One animal per acre	\$100.00
Horses	1	One animal per acre	\$100.00
Cattle	1	One animal per acre	\$100.00
Ratites	1	One animal per acre	\$100.00
Pig--Neutered, miniature Vietnamese Pot-Bellied	1	1	\$25.00
Rabbits	4	12	\$25.00
Other	3	(25 fur-bearing animals, i.e. chinchilla, mink)	\$100.00

Owning more than three kinds of animals, regardless of number of animals, requires the owner to obtain an Animal Maintenance Permit. Any combination of permit fees will not exceed \$100.00 per application. If a permit application is denied, 50% of the proposed permit fee will be retained for the administrative costs incurred.

3. It is unlawful for any person to own, harbor or maintain more animals or different types animals than is allowed by the Animal Maintenance Permit issued to such person by the Health Officer.

4. The Health Officer is empowered to establish administrative requirements for obtaining an Animal Maintenance Permit. Application forms and administrative requirements can be obtained through Animal Services, Environmental Services, City Treasurer or the City website.

The application shall contain the following information:

- a. The name, date of birth and address of the applicant;
- b. The name, breed, color, sex and age of all animals owned by the applicant;
- c. Documentation that all animals are properly vaccinated and licensed;
- d. Name and address of the licensed veterinarian who is responsible for the care and treatment of these animals;
- e. A signed statement by the applicant that the information is true and correct;
- f. The permanent ID or microchip number of all animals owned, if available;
- g. A statement as to whether the animals are spayed or neutered and whether there is a fenced yard or fenced run available for the confinement of the animals.
- h. The size of the premises in which the animals may be maintained.
- i. A diagram of the location of any and all domestic animal structures in which animals will be maintained.
- j. A signed statement on behalf of the applicant that maintenance of the animals will be in compliance with the animal control and sanitary waste requirements of the City of Wichita.
- k. A statement by the applicant that the zoning requirements of the Unified Zoning Code of the City of Wichita and Sedgwick County will be complied with.

l. A statement as to whether the applicant has ever had a licensed suspended or revoked which was issued by the State of Kansas pursuant to the Kansas Pet Animal Act. Such statement shall contain the date of any such suspension or revocation.

m. A copy of any current license issued to the applicant by the State of Kansas pursuant to the Kansas Pet Animal Act.

5. Approval of an Animal Maintenance Permit shall be contingent upon the applicant's compliance with all administrative requirements set forth by the Health Officer, the provisions of this title and the rules and the rules and regulations of the City of Wichita and the State of Kansas. Such applicant must show:

a. that the keeping of additional animals will not create a nuisance in the surrounding neighborhood, that humane care will be provided and that the premises where the animals are kept is suitable for the keeping of multiple animals and is in conformity with all City zoning requirements. The criteria to be evaluated include, without being limited to, the following:

1) That the animals will be kept or maintained at all times in a safe and sanitary manner.

2) That the quarters in which such animals are kept or confined will be adequately lighted and ventilated and are so constructed and maintained that they can be kept in a clean and sanitary condition.

3) That the health and well-being of the animals will not in any way be endangered by the manner of keeping or confinement.

4) That the keeping of such animals will not harm the surrounding neighborhood or disturb the peace and quiet of the surrounding neighborhood.

- 5) That the keeping of such animals will not cause fouling of the air by offensive odors and thereby create or cause unreasonable annoyance or discomfort to neighbors or others in close proximity to the premises where the animals are kept or harbored.
- 6) That the animals will not unreasonably annoy humans, endanger the life, health or safety of other animals or persons or substantially interfere with the rights of citizens to the enjoyment of life or property.
- 7) That the animals will not make disturbing noises, including but not limited to, continued and repeated or untimely howling, barking, whining or other utterances causing unreasonable annoyance, disturbance or discomfort to neighbors and others in close proximity to the premises where the animals are kept or harbored, or otherwise be offensive or dangerous to the public health, safety or welfare, by virtue of their behavior, number, type or manner of keeping.
- 8) That the applicant, or any person who will share in the care, custody and control of the animals, is not currently in violation of, or has not previously violated any applicable City, state or federal laws, codes, rules or regulations, including, but not limited to, those pertaining to the care and control of animals and the maintenance of their property, which would reflect adversely on their ability to fully comply with the conditions of the subject permit.

b. The Health Officer may deny any application where any one or more of the following conditions exist:

- 1) The applicant fails to show proof of the aforementioned requirements or an examination of the documentation submitted by the applicant;
- 2) An investigation by Animal Services reveals that the applicant has failed to meet the requirements of this section.

- 3) The applicant made a false statement as to any material matter in the application for a license of a license renewal, or in a hearing concerning the license.
 - 4) Violation by the licensee or applicant of a provision of this title, the Kansas Pet Animal Act or any state or federal law relating to the care and treatment of animals.
 - 5) If the applicant has had a breeder's license or animal maintenance permit revoked within eighteen (18) months prior to the application.
 - 6) If the applicant has had a license issued by the Kansas Department of Animal Health suspended or revoked within eighteen (18) months prior to the application.
 - 7) Maintenance of the animals would be in violation of the Unified Zoning Code of the City of Wichita.
 - 8) No Animal Maintenance Permit shall be issued to own, keep, or harbor more than two adult pit bull dogs.
 - 9) The applicant has a history of allowing animals to run loose or escape, has otherwise been found to be neglectful, has had an animal identified as a nuisance, or has previously been determined to have violated the provisions of this title.
- c. The Health Officer shall state, in writing, the factual basis for his or her recommendation to grant or deny any application. The Health Officer shall consider past violations, the size, condition and location of the area where the animals will be kept, the size of the animals to be kept, past complaints concerning the applicant, the burden of proof and the criteria set forth in this section, or any other factors relative to the issue of keeping additional animals.
- The permit shall be issued for the period not to exceed twelve (12) months.

d. The fee for such Animal Maintenance Permit shall be paid in accordance with Table 1 of Subsection (b)(2). All fees shall be nonrefundable and nontransferable. The Animal Maintenance Permit shall be issued for the individual animals listed on the application and shall not be transferable to other animals. The fact an individual has previously been issued an animal maintenance permit may be considered but shall not be controlling to the Health Officer's decision to issue animal maintenance permit for a different animal.

The denial of any Animal Maintenance Permit shall be subject to the appeal procedures set forth in Section 16.04.158.

e. Any applicant who had more than two cats or more than two dogs or livestock prior to annexation of their property by the City, shall be permitted to keep but not replace said animals until their number equals the number of animals permitted by Section 6.04.157(a). Any such applicant shall be required to apply for an Animal Maintenance Permit and be required to pay a yearly renewal fee, provided that nothing in this section shall exempt or except any applicant or any other person from the registration, vaccination or any other requirement of this chapter.

f. Any individual who had a current Animal Maintenance Permit or variance at the time of passage of this ordinance shall be permitted to keep but not replace said animals until their number equals the number of animals permitted by Section 6.04.157(a). Any such applicant shall be required to apply for an Animal Maintenance Permit and be required to pay a yearly renewal fee, provided that nothing in this section shall exempt or except any applicant or any other person from the registration, vaccination or any other requirement of this chapter.

g. Any individual who had a current Animal Maintenance Permit or variance for livestock at the time of passage of this ordinance shall be permitted to keep but not replace said animals. Any such

applicant shall be required to apply for an Animal Maintenance Permit and be required to pay a yearly renewal fee, provided that nothing in this section shall exempt or except any applicant or any other person from the registration, vaccination or any other requirement of this chapter.

h. For the purposes of this section:

1) *Nuisance* for the purposes of this section, shall be defined as any act which is unreasonably annoying or vexatious to another or substantially interferes with the rights of others and shall include, but not be limited to, obnoxious odors, excessive noise, and creation of an environment attractive to other animals or insects. More than three substantiated violations of this title within a twelve-month period will automatically constitute a nuisance.

2) *Humane standards of care* shall be defined to include, but not be limited to, accessibility of the animal to food and water, proper medical attention, proper shelter from the elements, and cleanliness in animal waste areas with regular waste removal.

3) *Livestock* includes, but is not limited to: horses, mules, cattle, sheep, llamas, ratites and goats.

i. Not more than one head of livestock shall be kept for each one acre of contiguous unbuilt land area, provided that the limitation shall not apply to a commercial riding stable, a riding academy, or a commercial stockyard with an approved manure disposal plan.

j. Owners of livestock within the City without an Animal Maintenance Permit or variance on the date of the passage of this ordinance shall be allowed twelve months from the date of adoption to come into compliance with the acreage requirements set forth in subsection (1).

k. Owners of livestock within the City with a current Animal Maintenance Permit or variance at the date of the adoption of the ordinance shall be permitted to keep, but not replace said animals.

- l. All owners or harborers of livestock must comply with the provisions of Section 6.04.173 regarding the maintenance of all domestic animal structures.
 - m. The holder of an Animal Maintenance Permit will provide, upon request of the Health Officer, proof of licensure where applicable, and vaccination of any animals subject to the Animal Maintenance Permit.
 - n. The premises designated in the animal maintenance permit shall be available for inspection by the Health Officer to ensure compliance with the provisions of this code and the laws of the State of Kansas.
 - o. The holder of an animal maintenance permit will notify the Health Officer if any of the animals subject to the animal maintenance permit is no longer owned by the individual. Any individual who fails to comply with the requirements of this section shall be deemed guilty of a misdemeanor.
6. Variances: Any application for a variance to own, keep, or harbor more than four (4) dogs or four (4) cats or any combination thereof in excess of four (4) or for a variance to the requirements of this chapter based on physical or geographical features of the site, or required acreage for livestock, may be granted by the Director of Environmental Services if he or she determines that the variance will not adversely affect public health and safety or the environment, pose a threat to the environment or constitute a nuisance to neighbors.
 - a. The applicant shall complete an application form and pay all applicable fees for an animal maintenance variance. Such application shall include the information set forth in the application for an Animal Maintenance Permit. In addition to the fees set forth in Subsection (b)(2), the

applicant shall pay an initial inspection fee of \$50.00 to the City of Wichita. No inspection fee shall be assessed for subsequent renewals of any variance.

b. In making the determination as to whether the variance request should be granted, the Director of Environmental Services shall rely on the criteria set forth in subsection (4) of this section.

c. The Director shall notify the applicant for the variance of his or her determination of the request in writing stating the basis for any denial and any conditions placed on any granted variance request. Individuals aggrieved by any decision of the Director of Environmental Services relative to waivers may appeal to the City Council within ten days of the notice of such decision pursuant to Section 6.04.210 of this Code.

SECTION 12. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this _____ day of December, 2009.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf
Director of Law

First Published in The Wichita Eagle on _____

DELINEATED

DATE

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTIONS 6.04.010, 6.04.040, 6.04.045, 6.04.046, 6.04.048, 6.04.052, 6.04.60, 6.04.070, 6.04.140, 6.04.155 AND 6.04.157 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO ANIMALS AND REPEALING THE ORIGINALS OF SAID SECTIONS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

Section 1. Section 6.04.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

Sec. 6.04.010 Definitions.

As used in this chapter:

(a) *Abandoned cat* means a cat which has returned to the feral state or which does not have a collar.

(b) *Adequate care* means normal care and prudent attention to the needs and welfare of an animal, including that care normally needed to maintain good health of the animal, including clean and dry bedding and resting surfaces, grooming, removal of manure, and:

1. *Adequate food* means wholesome foodstuffs suitable for the animal provided at suitable intervals in a sanitary manner in quantities sufficient to maintain good health of the animal considering its age and condition; and

2. *Adequate health care* means the provision to an animal of all immunizations and preventive care required to maintain good health; space adequate to allow the animal to rest and exercise sufficient to maintain good health; and the provision to each sick, diseased or injured animal of necessary veterinary care or humane death; and

3. *Adequate shelter* means a structurally sound, properly ventilated, sanitary and weatherproof shelter suitable for the animal, considering the condition and age of the animal which provides access to shade from direct sunlight and regress from exposure to inclement weather conditions; and

4. *Adequate water* means a continual access to or access at suitable intervals to a supply of clean, fresh, potable water provided in a sanitary manner suitable for the condition of the animal.

(c) *Adult animal* means an animal that has reached sexual maturity. For the purposes of this title, unless otherwise specified, an animal will be considered to be an adult at five (5) months of age.

(d) *Animals* means all vertebrate and invertebrate animals such as, but not limited to, dogs, cats, bovine cattle, horses and other equines, hogs, goats, rabbits, sheep, chickens, ducks, geese, turkeys, pigeons, and other fowl or wild animals, reptiles, fish, or birds that have been tamed, domesticated or captivated.

Such term does not include exotic or dangerous wild animals, as defined by Chapter 6.08.

(e) *Animal fighting paraphernalia* means equipment, animals, or commodities designed or capable of use for the purpose of training animals to attack other animals, as in dogfighting or cockfighting, including but not limited to: animal treadmills, drugs for healing animals such as anti-inflammatories, antibiotics or steroids, spurs, equipment used to threaten animals for the purpose of training for aggressive behavior, and/or equipment used to strengthen animal bodies.

In determining whether an object is animal fighting paraphernalia, a court or other authority shall consider, in addition to all other logically relevant factors, the following:

1. Statements by an owner or person in control of the object concerning its use.
2. Prior convictions, if any, of an owner or person in control of the object under any state law or city ordinance relating to animal fighting, animal cruelty or gambling.
3. The proximity of the object, in time and space, to a direct violation of an animal fighting, animal cruelty or gambling statute or ordinance.
4. The proximity of the object, in time and space, to other objects also susceptible for use as animal fighting paraphernalia.
5. The existence of bloodstains or blood spatters on the object.
6. The manner in which the object is displayed for sale or is described in written material on the subject of animal fighting.
7. The existence and scope of legitimate uses for the object in the community.
8. Expert testimony concerning the object's use.
9. The proximity of the object, in time and space, to dogs showing evidence of wounds or scarring.

f. *Animal shelter* means the facility or facilities authorized to care for animals impounded or held under the authority of the ordinances of the City of Wichita or the State of Kansas.

g. *Attack* means violent or aggressive physical contact with a person or domestic animal or violent or aggressive behavior that confines the movement of a person, including, but not limited to, charging, cornering, chasing, or circling a person.

h. *Bite* means any actual or suspected abrasion, scratch, puncture, tear, bruise or piercing of the skin, caused by any animal, which is actually or suspected of being contaminated or inoculated with the saliva from the animal, directly or indirectly, regardless of the health of the animal causing such bite.

i. *Cat* means any of the small carnivorous mammal varieties of *Felis Catus* which are domesticated. Such term shall not include hybrid breeds of cats which have been bred to a wild animal.

j. *Cattery* means any premises where there is being maintained or harbored a total of five or more cats or more than two unspayed female cats, except veterinary hospitals. This term does not include foster homes operated under the auspices of rescue organizations licensed by the Kansas Department of Animal Health.

k. *City Treasurer* means the duly appointed treasurer of the city or his/her authorized representative.

l. *Commercial animal establishment* means any pet shop, animal day care, grooming shop, auction, riding school, stable, kennel, guard dog service, dog trainer or other business which keeps or maintains animals in stock for retail or wholesale trade or sale.

m. *Dangerous dog* means:

1. Any dog which has exhibited a vicious propensity toward persons or domestic animals and is capable of inflicting serious physical harm or death or damage to property; or
2. Any dog which, without provocation, attacks or bites, or has attacked or bitten a human being or domestic animal. This shall not apply if the victim was committing a willful criminal trespass on the property where the dog was harbored at the time of the attack or bite; or

3. Any dog owned or harbored primarily or in part for the purpose of dog fighting, or any dog trained for dog fighting; or
 4. Any dog which chases or menaces any person in an aggressive manner, except that a dog shall not be deemed dangerous if the complainant was committing a willful criminal trespass at the time.
 5. Any dog that poses a threat to public safety or constitutes a danger to human life or property based upon criteria described in Section 6.04.045, as determined by the Health Officer.
- n. *Defecate* means to excrete waste matter from the bowels.
- o. *Dog* means any animal which is of the species *Canis Familiaris*. Such term shall not include hybrid breeds of dogs which have been bred to a wild animal.
- p. *Dog breeder* means a person who raises or produces dogs or puppies for sale or profit.
- It is presumed that a person who advertises the sale of dogs or puppies or a person who owns two or more unaltered female dogs is a dog breeder. Such term shall include persons who are licensed by the State of Kansas as an Animal Dealer, Retailer Breeder, Animal Breeder, Hobby Breeder or Hobby Kennel. Such term shall include a person who owns one or two ~~more~~ unaltered pit bulls.
- q. *Animal day care* means a commercial establishment that takes temporary possession of an animal, at the request of an owner, to provide safety, comfort and/or socialization of the animal.
- r. *Domestic animals* means all animals that have been domesticated, such as, but not limited to, dogs, cats, cattle, horses, swine, goats, rabbits, sheep, chickens, ducks, geese, turkeys, pigeons or other fowl.
- s. *Domestic animal structure* means all pens, houses or structures where domestic animals are confined, such as, but not limited to: hutches, cotes, lofts, kennels, dog runs, warrens, feed lots,

barns or other buildings and enclosures. The term does not apply to perimeter fencing surrounding the property.

t. *Exotic animal* means those animals not normally occurring in North America and animals of any species the majority of whose populations are wild.

u. *Ferret* means a domesticated, small, elongated carnivorous mammal which belongs to the Mustelidae Family (*Mustela putorius furo*).

v. *Foster care, group home or rescue* means a person or organization, whether for profit or non-profit, which provides temporary care for animals from a licensed animal shelter at a private residence. Temporary care is a period of time not to exceed six (6) months. Such term shall include foster, group and rescue homes operated under the auspices of rescue organizations licensed by the Kansas Animal Health Department.

w. *Fowl* means any domesticated or wild bird, including but not limited to: chickens, hens, ducks, geese, pheasants, turkeys, doves, pigeons, parrots, parakeet and exotic birds.

x. *Garbage* means the putrescible animal and vegetable waste resulting from the handling, preparation, cooking and consumption of food for human beings.

y. *Groomer* means a person or establishment which provides animal grooming services.

z. *Health Officer* means the Director of the City of Wichita Department of Environmental Services or authorized representative.

(aa) *Inhumane treatment* means any treatment to any animal which deprives the animal of necessary sustenance, including food, water and protection from the weather; any treatment such as overloading, overworking, tormenting; beating, mutilating, teasing or other abnormal treatment; or causing or allowing the animal to fight with any other animal.

- (bb) *Kennel* means any premises where there is being maintained a total of five or more adult dogs owned by the property resident.
- (cc) *Livestock* means any cow, ox or other bovine, goat, sheep, horse, ratites, donkey, swine, mule or other animal of similar or larger size.
- (dd) *Microchip* means a passive transponder which can be implanted in an animal and which is a component of a radio frequency identification (RFID) system.
- (ee) *Neighbor* means any person residing within two hundred feet (200') from the outermost property line of the property where a domestic animal is owned, kept or harbored.
- (ff) *Owner, keeper or harborer* means any person who possesses, harbors, keeps, feeds, shelters, maintains, offers refuge or asylum to any animal, or who professes to keeping, owning or harboring of such animal. In addition, any person who signs a receipt as owner, keeper or harborer for the return of an animal from any shelter or animal holding facility, shall be presumed to be the owner, keeper or harborer of the animal. A parent or legal guardian shall be deemed to be an owner, keeper or harborer of animals owned, kept or harbored upon their premises by minor children who are less than eighteen (18) years of age. Such term shall also include any person who exercises control over or is in possession of any such animal.
- (gg) *Person* means any individual, firm, association, joint stock company, syndicate, partnership, corporation, other state franchised business entity such as a professional association, limited liability company, or limited liability partnership, or other organization of any kind.
- (hh) *Picket* means attaching a leash, rope, chain, lead, tether or other similar apparatus or device to the body of an animal and another inanimate or immovable object for the purpose of confining the animal or limiting the movement of the animal.

(ii) *Pit Bull dog* is defined to mean any and all of the following dogs:

1. The Staffordshire Bull Terrier breed of dogs;
2. The American Staffordshire Terrier breed of dogs;
3. The American Pit Bull Terrier breed of dogs;
4. Dogs which have the appearance and physical characteristics of being predominately of the breeds of dogs known as Staffordshire Bull Terrier, American Pit Bull Terrier or American Staffordshire Terrier.

A dog which possesses five out of the following eight characteristics shall be considered to be a pit bull:

1. Head is medium length, with a broad skull and very pronounced cheek muscles, a wide, deep muzzle, a well-defined, moderately deep stop, and strong under jaw. Viewed from the front the head is shaped like a broad, blunt wedge.
2. Eyes are round to almond shaped, are low in the skull and set far apart.
3. Ears are set high. Un-cropped ears are short and usually held rose or half prick, though some hold them at full prick.
4. Neck is heavy and muscular, attached to strong, muscular shoulders.
5. Body is muscular, with a deep, broad chest, a wide front, deep brisket, well-sprung ribs, and slightly tucked loins.
6. Tail is medium length and set low, thick at the base, tapering to a point.
7. Hindquarters are well muscled, with hocks, set low on the legs.
8. Coat is a single coat, smooth, short and close to the skin. Pit bull puppies have the same characteristics, though in juvenile or adolescent form. Muscles, along with breadth and depth of

head and chest may be less developed. Specifically excepted from this definition is any dog with proof, by by a written certification from a veterinarian licensed by the State of Kansas, that the dog does not contain in its lineage any American Pit Bull Terrier, American Staffordshire Terrier or Staffordshire Bull Terrier.

(jj) *Premises* means a lot, plot or parcel of land including structures located thereon.

(kk) *Public nuisance* means any repeated acts of an animal that irritates, perturbs or damages rights and privileges common to the public or enjoyment of private property or indirectly injures or threatens the safety of a member of the general public. Such actions include, but are not limited to:

1. Damage to public or private property including, but not limited to: breaking, bruising, tearing up, digging up, crushing or injuring any lawn, garden, flower bed, plant, shrub or tree in any manner;
2. Rips any trash bag or tips any solid waste collection container which spills or scatters trash, debris, refuse or waste.
3. Repeatedly defecates upon any public place or upon premises not owned or controlled by the animal's owner, keeper or harbinger, provided that this definition shall not apply where such waste is immediately removed and properly disposed of by the owner of such animal.
4. Allowing or permitting an animal to be maintained in an unsanitary condition so as to be offensive to sight or smell.
5. Causes a condition which endangers public health or safety.

(ll) *Ratites* means all creatures of the ratite family that are not indigenous to this state, including but not limited to, ostriches, emus and rheas.

(mm) *Refuse* means all putrescible and non-putrescible waste materials (except animal body discharges) such as trash, garbage, dead animals, paper, cardboard, tin cans, grass, wood, metals, salvage or inert materials produced or accumulated in connection with the maintenance of domestic animals.

(nn) *Retail* means any transaction where the animal is sold to the final consumer.

(oo) *Running at large* means any animal, with the exception of a cat, that is not confined within a fenced enclosure or shelter capable of preventing the animal from exiting at will, unless under the control of a person, either by lead, cord, rope or chain; provided that an animal may be considered confined if it is on a leash, rope or chain which is sufficient to keep the animal on the premises where picketed in accordance with section 6.04.040~~(e)~~(e)(14). For the purposes of this chapter, an animal shall not be considered running at large when on the owner's property and confined by an operating electronic fencing system when the premises are clearly and prominently marked to show the existence of the electronic fencing system and the animal is equipped with the necessary and operating components of the system required to confine the animal to the owner's property. Further, a dog shall not be considered to be running at large when it is unleashed inside a dog park owned or operated by the City of Wichita.

(pp) *Sale* or *offer for sale* includes transfers by sale or exchange.

(qq) 'Sanitary' means clean, free from waste and free from infectious influences.

(rr) *Secure enclosure* means a locked enclosure or structure measuring at least 6 feet in width, 12 feet in length, and 6 feet in height, ~~capped if there is a dog house inside~~ a secure top attached to the sides ~~or if the dog can climb fence, with secure sides,~~ which provides proper protection from the elements for the dog, is suitable to prevent the entry of young children, and is designed

to prevent the animal from escaping while on the owner's property, which has been inspected and approved by the Health Officer. Such enclosure shall have a concrete or wire floor to prevent the dog from digging out or escaping from the enclosure.

(ss) *Service animal* means any animal recognized as a qualified service animal pursuant to the Americans with Disability Act of 1990. A qualified service animal is defined as, but not limited: to a dog which has been specially selected, trained and tested to perform a variety of tasks for persons with disabilities. These tasks include, but are not limited to: pulling wheelchairs, lending balance support, picking up dropped objects or providing assistance in, or to avoid, a medical crisis or to otherwise mitigate the effects of a disability. The presence of a dog for comfort, protection or personal defense does not qualify a dog as being trained to mitigate an individual's disability and, therefore, does not qualify the dog as a service dog.

(tt) *Stockyard* means a public terminal stockyard posted by the packers and stockyards divisions of the United States Department of Agriculture.

(uu) *Unaltered* means an animal which has not been surgically sterilized.

(vv) *Veterinarian* means a doctor of veterinary medicine licensed by the State of Kansas.

(ww) *Veterinarian hospitals* means a domestic animal hospital operated by a doctor of veterinary medicine, licensed by the State.

(xx) *Vicious propensity* means a known tendency or disposition to approach any individual or domestic animal in an attitude of attack when there is no provocation.

(yy) *Waste* or *wastes* means manure or the bodily discharge of all domestic animals, spilled feed or unconsumed feed and liquid cleaning wastes, including suspended solids resulting from cleaning operations.

(zz) *Wild animal* means any species that has established breeding populations currently within North America, which is self sufficient in the natural environment, and the majority of whose populations are not domesticated.

Section 2. Section 6.04.040 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

Sec. 6.04.040. Control and protection of animals in general.

(a) Any owner, keeper or harbinger of any animal, other than cats, found running at large within the corporate limits of the city shall be deemed guilty of a misdemeanor. Knowledge or intention on the part of the owner, keeper or harbinger shall not be elements of this offense. The Health Officer may seize, impound and cause to be destroyed any such animal, including those animals not within the definitions of the Kansas Pet Animal Act, using the procedures set out at K.S.A. 47-1710. The Health Officer may return the animal to its rightful owner, keeper or harbinger upon request and may require the payment of a service charge and a boarding fee for days spent in confinement at the shelter prior to return of the animal. If any animal impounded for any reason is determined by the Health Officer to require confinement separate from other like animals in order to protect the health and well being of that animal, staff, the public, or other animals being housed at the animal holding facility due to any aggressive behavior and/or any disease or medical conditions, the boarding fee for such animal shall be twice the normal boarding fee established by the animal shelter. Any person who is convicted of the charge of animal running at large shall be punished as set forth below:

1. Upon a first conviction, a fine of not less than \$50.00 nor more than \$1,000.00 shall be assessed.

2. Upon a second conviction a fine of not less than \$100.00 nor more than \$1,000.00 shall be assessed.

3. Upon a third or subsequent conviction, a fine of not less than \$200.00 nor more than \$1,000.00 shall be assessed and the owner must appear in Municipal Court.

(b) In addition to the penalties set forth in paragraph (a), the owner, keeper or harborer of any unaltered dog that has been impounded for running at-large shall be required to:

1. Have an identification microchip implanted in the dog traceable to the current owner, and registered with the City of Wichita, and

2. Have the dog surgically sterilized by a licensed veterinarian within thirty days of redemption of said dog, at his or her own expense. It shall be a violation of this ordinance to fail to have the dog surgically sterilized, or provide proof from a licensed veterinarian that said dog has previously been surgically sterilized, or has been surgically sterilized and micro-chipped within thirty days after redemption of said dog as indicated in this ordinance, or

3. The owner, keeper or harborer may maintain the aforementioned dog intact by paying an additional unaltered animal fee, the amount of which shall be established by the Health Officer, to redeem such dog from the Animal Shelter. Such dog may be maintained intact provided that the dog is not found to be running at large on any subsequent occurrence within the dog's lifetime.

4. For any dog required to be surgically sterilized, the Health Officer shall collect payment for and issue a spay/neuter voucher at the time of the animal's redemption, and the owner, keeper or harborer shall provide documentation of the sterilization upon completion. Such voucher shall remain valid for thirty (30) days. Any owner, keeper or harborer failing to provide documentation of the sterilization procedure within thirty days of impoundment shall be deemed guilty of a

misdemeanor. If the dog's owner had a valid dog license, such owner shall not receive a refund of the licensing fees paid for the altering or micro chipping of the dog. Upon the renewal of the license, the amount will be changed to reflect the altering and micro chipping of the dog.

(c) Upon the second occurrence of any intact dog impounded by the Health Officer for running at large, the owner, keeper or harborer of such dog shall be required to have the animal surgically sterilized by a licensed veterinarian within thirty days of redemption of said dog at his or her own expense. For any animal required to be surgically sterilized, the Health Officer shall collect payment for and issue a spay/neuter voucher at the time of the animal's redemption, and the owner, keeper or harborer shall provide documentation of the sterilization upon completion. Any owner, keeper or harborer failing to provide documentation of the sterilization procedure within thirty days of impoundment shall be deemed guilty of a misdemeanor.

(d) Animals which are kept on the premises of any pet store shall not be allowed, by the storeowner or any employee, to run at large inside the store or on the external premises of the pet store during business hours, and no person shall allow any animal under their care or control to run at large on the premises of any store during business hours. This provision shall not apply to animals participating in supervised training classes within an enclosed area of the store.

(e) It is unlawful for any person to:

1. Kill any squirrel or songbird within the corporate limits of the city; provided, that it shall be permissible for the Health Officer to kill squirrels, skunks, birds, or other animals that have become so numerous as to cause destruction or nuisance to property or in the event of disease occurring among such squirrels, skunks, birds, or other animals that may be considered contagious to human beings;

2. Interfere with or molest an animal used by the police or fire department of the city or other governmental agency or department in the performance of its lawful functions and duties or interfere with the handler of such animal in such a way that the handler is deprived of or inhibited in his control of such animal;

~~3. Promote, stage, hold, manage, conduct, carry on, participate in or attend any game, exhibition, contest or fight in which one or more animals are engaged for the purposes of injuring, killing, maiming or destroying themselves or any other animals, including but not limited to cock fighting or dog fighting;~~

~~4. Knowingly permit animal fighting as defined by subsection (3) on the premises under one's ownership, charge or control.~~

3. Own, maintain, or have in his or her possession animal fighting paraphernalia;

~~6.~~ 4. Own, keep or harbor on one's premises any animal, by a person convicted of animal fighting, pursuant to this section or K.S.A. 21-4315 or convicted of cruelty to animals as defined by Section 6.04.035 of the Code of the City of Wichita or K.S.A. 21-4310 and amendments thereto.

~~7.~~ 5. Own, kKeep or harbor any animal, which, by loud, frequent, excessive or habitual barking, howling, yelping or other noise or action, unreasonably interferes with the use or enjoyment of property of any person of reasonable sensibilities residing in or occupying the area. To effect legal relief, persons so affected directly may sign a complaint at the Department of Environmental Services or contact the Wichita Police Department to file a report regarding such nuisance.

~~8.~~ 6. Allow any unsprayed female dog in season to be in an area where there is access by an unconfined male dog;

~~9.~~ 7. Allow an unconfined male dog in an area where there is access to any unspayed female dog in season;

~~10.~~ 8. ~~Own, k~~Keep or harbor a dog over five months of age within the corporate limits of the city without such dog having a current vaccination against rabies performed by a veterinarian, and the owner thereof securing an annual license for such dog issued by the City Treasurer. The Director of Environmental Services shall have the authority to establish appropriate licensing fees for such animals.

~~11.~~ 9. ~~Own, k~~Keep or harbor a cat over five months of age within the corporate limits of the city without such cat having a current vaccination against rabies performed by a veterinarian licensed by the State of Kansas.

~~12.~~ 10. Sell or offer for sale, barter or give away any living baby chicks, rabbits, ducklings, or other fowl except pigeons, under two months of age or to sell, offer for sale, barter, give away or display animals or fowl as specified in this subsection which have been dyed, colored or otherwise treated so as to impart to them an artificial or unnatural color; provided, however, that this section shall not be construed to prohibit the sale of animals or fowl, as specified in this subsection, in proper brooder facilities by hatchers or persons engaged in the raising and selling of such animals and fowls for recognized animal husbandry or commercial purposes;

~~(13)~~ 11. ~~Own, kKeep, or harbor maintain,~~ sell or offer for sale, barter or give away any animal whose possession is prohibited by federal or state law; or any exotic animal as defined in by this title. This section shall not apply to: tropical or other fishes; birds, except those prohibited by federal or state law; animals such as gerbils, rats, mice, hamsters, guinea pigs, and ferrets; small mammals raised for harvesting of fur salable into an existing market, such as chinchillas, nutria

and mink; nonpoisonous amphibians and reptiles, not including pythons, anacondas, boa constrictors, monitor lizards, iguanas, alligators, caiman, crocodiles and turtles. This section shall not apply to exhibitions authorized by and conducted in accordance with Chapter 6.08.

~~(14)~~ 12. Continuously picket a dog for more than one continuous hour, except that picketing of the same dog may resume after a hiatus of three continuous hours. A dog may not be picketed for a total time period exceeding three hours, in any twenty-four-hour period.

For the purpose of picketing a dog, a chain, leash, rope, or tether shall be at least 10 feet in length.

(i) A chain, leash, rope, collaring device, tether, or any assembly or attachments thereto used to picket a dog shall not weigh more than one-eighth (1/8) of the animal's body weight, or due to weight, inhibit the free movement of the animal within the area picketed.

(ii) Dogs shall be picketed in such a manner as to prevent injury, strangulation, or entanglement on fences, trees, or other man made or natural obstacles;

(iii) It is unlawful to attach chains or other tether restraint implements directly to a dog without the proper use of a collar, harness, or other device designed for that purpose and made from a material that prevents injury to the animal.

~~15.~~ 13. Permit or allow any animal to be a public nuisance.

~~16.~~ 14. Own, keep or possess, harbor or ~~maintain~~ more animals than is permitted by the requirements of this title.

(f) Health Officers and other law enforcement officers may issue the owner or owners of animals creating a public nuisance, as defined in this title, a citation to appear in municipal court to answer the offense charged. To effect legal relief, persons affected directly may sign a complaint at the

Department of Environmental Services or contact the Wichita Police Department to file a report regarding such nuisance.

Section 3. Section 6.04.045 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

Sec. 6.04.045. Dangerous dog--Determination--Notice and hearing--Confinement or destruction.

a) The Health Officer may declare a dog to be dangerous based on:

1. The nature of any attack committed or wound inflicted by the animal;
2. The past history and seriousness of any attacks or wounds inflicted by the animal;
3. The potential propensity of the animal to inflict wounds or engage in aggressive or menacing behavior in the future;
4. The conditions under which the animal is kept and maintained which could contribute to, encourage, or facilitate aggressive behavior, such as, but not limited to, allowing the animal to run at large, tethering in excess of legal limits as defined in this chapter, physical property conditions, presence of young children, the elderly, or infirm within or residing near the home, any past violations of this chapter, and/or failing to provide proper care, food, shelter, or water.

If the Health Officer determines that the animal is dangerous, he or she will determine an appropriate disposition based on the known facts and consistent with the provisions of this chapter. The Health Officer may impound the dog and shall notify the owner of such determination by personal service, residential service at the person's usual place of abode by leaving a copy of the notice with some person of suitable age and discretion residing therein, or by certified mail addressed to the owner's last known address, or addressed to the location where the

dog is maintained. Service by certified mail, shall request return receipt, with instructions to the delivering postal employee to show to whom delivered, the date of delivery, and address where delivered. Service of process by certified mail shall be considered obtained upon the delivery of the certified mail envelope. If the certified mail envelope is returned with an endorsement showing refusal of delivery, the Health Officer shall send a copy of the notice to the defendant by ordinary, first class mail. This first class mailing shall be evidenced by a certificate of mailing. Service shall be considered obtained upon the mailing of this additional notice by first class mail. The owner of a dog declared dangerous may request an administrative review of the determination by filing a written request with the Health Officer within ten days of receipt of such notification.

(b) The Health Officer will conduct a hearing within ten days of receipt of the owner's request. At such hearing, testimony may be offered by the owner of the dog, the Health Officer, victims of any bite or attack, neighbors or other affected persons, and veterinarians concerning the vicious propensity of the dog. In making a determination, the Health Officer shall consider the factors listed in subsections (1) through (4) above. It shall be an affirmative defense that at the time of a bite, attack, or threatening behavior:

1. The dog was actively being used by a law enforcement official for legitimate law enforcement purposes; or
2. The threat, injury, or damage was sustained by a person:
 - (i) Who was committing, at the time, a ~~willful~~ criminal trespass or other tort upon the premises lawfully occupied by the owner of the dog; or
 - (ii) Who was provoking, tormenting, abusing, or assaulting the dog or who can be shown to have repeatedly, in the past, provoked, tormented, abused or assaulted the dog; or

(iii) Who was committing or attempting to commit a crime; or

3. The dog was responding to pain or injury.

If the Health Officer determines that the dog is dangerous, he or she shall determine an appropriate disposition based on the facts determined at the hearing and the provisions of this chapter, and will notify the owner in writing of the outcome of the hearing within five business days. The owner may appeal the hearing outcome as provided for in Section 6.04.210. During the appeal process, the owner, keeper or harbinger of such animal shall be responsible for the cost of keeping such animal in the Animal Shelter. The owner, keeper or harbinger of such animal can file a renewable, non-refundable, cash or performance bond with the Animal Shelter where the animal is being held, within the 10 day appeal period, in an amount equal the cost of care and treatment of the animal for thirty (30) days. Said cash or performance bond shall be renewable for an additional thirty (30) days and each successive thirty (30) days the animal is held by Animal Services during the pendency of the appeal. Payment of said renewal shall be within 5 days of the running of the previous thirty (30) day period. If said cash or performance bond, or its renewal, is not tendered to the Animal Shelter within the time specified above, then the Health Officer shall have immediate ownership of such animal and shall determine the disposition of such animal. Absent such appeal, the Health Officer may pick up and cause the animal to be destroyed, or in lieu of such destruction he or she may permit the confinement of the animal in a manner and location that he or she deems appropriate or as provided in Section 6.04.046.

Section 4. Section 6.04.046 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

Sec. 6.04.046. Dangerous dog--Failure to confine--Destruction and defenses.

(a) It is unlawful for an owner, keeper or harborer of a dangerous dog to permit the dog to be outside an approved or secure enclosure unless the dog is restrained by a substantial chain or leash and under physical restraint by a responsible person who is eighteen years of age or older and possesses sufficient strength for physical control of the animal for the purpose of transportation to and from a veterinarian for medical treatment. In such event, the dangerous dog shall be securely muzzled and restrained with a chain or leash not exceeding four (4) feet in length, and shall be under the direct control and supervision of the owner, keeper or harborer of the dangerous dog. The muzzle shall be made and used in a manner that will not cause injury to the dog or interfere with its vision or respiration, but shall prevent it from biting any human or animal.

(b) Secure or approved enclosures required under this section must be approved by the Health Officer and be adequately lighted and kept in a clean and sanitary condition.

(c) The owner, keeper or harborer shall allow the Health Officer access to the property where the dangerous animal is being harbored to facilitate inspections and insure compliance for the duration of the life of the animal.

(d) The owner, keeper or harborer of any dog that has been determined to be dangerous shall be required to have the animal surgically sterilized by a licensed veterinarian within thirty days of the dangerous animal determination, at his or her own expense. For any animal required to be surgically sterilized, the Health Officer shall collect payment for and issue a spay/neuter voucher at the time of the animal's redemption, and the owner, keeper or harborer shall provide documentation of the sterilization upon completion. If the dog's owner had a valid dog license,

such owner shall not receive a refund of the licensing fees paid for the altering or micro chipping of the dog. Upon the renewal of the license, the amount will be changed to reflect the altering and micro chipping of the dog.

Any owner, keeper or harbinger failing to provide documentation of the sterilization procedure as required by this section shall be deemed guilty of a misdemeanor.

(e) The owner, keeper or harbinger of any dog that has been determined to be dangerous shall be required to have a microchip, traceable to the dangerous dog and the current owner, inserted into the dog and copies of documentation of said procedure available for review by the Health Officer. If the dog's owner had a valid dog license, such owner shall not receive a refund of the licensing fees paid for the altering or micro chipping of the dog. Upon the renewal of the license, the amount will be changed to reflect the altering and micro chipping of the dog.

Any owner, keeper or harbinger of a dangerous dog who fails to comply with this provision shall be deemed guilty of a misdemeanor.

(f) It is unlawful for anyone having prior felony convictions defined in articles 34, 35, 36, and 43 of Chapter 21, and article 41 of Chapter 65 of the Kansas Statutes Annotated to possess, harbor, own or reside on any premises with a dangerous dog.

(g) It shall be unlawful for any person to:

- (1) harbor, keep or maintain a dangerous dog on property not owned by the person without the written consent of the land owner; or
- (2) sell, barter or give away to another person a dog which has been deemed dangerous; or
- (3) own, keep ~~possess~~ or harbor more than two dogs which have been declared dangerous by this title.

~~The provisions of subsection(g)(3) shall not apply to individuals, who at the time of the passage of the ordinance, owned two or more dogs which were declared dangerous prior to the date of passage of this ordinance.~~

(h) Should a previously determined dangerous dog be found running at large in violation of this section attack or inflict injury upon any person, the judge of the Municipal Court shall, in addition to any other penalty provided in Section 6.04.190, order the dog destroyed. Provided, however, the judge of the Municipal Court may, at his or her discretion, consider whether the attack or injury was sustained by a person who, at the time, was committing a ~~willful~~ criminal trespass or other tort upon the premises of the owner of the dog, or was tormenting, abusing, or assaulting the dog, or has, in the past, been observed or reported to have tormented, aroused, or assaulted the dog or was committing or attempting to commit a crime.

Section 5. Section 6.04.048 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

Sec. 6.04.048. Registration and insurance.

(a) The owner, keeper or person harboring a dangerous dog shall annually register the dangerous dog with the Health Officer on such forms designated by the Health Officer, and shall have a microchip, traceable to ~~the dangerous dog and~~ the current owner of the dog, inserted into the dog. The owner, keeper or harborer shall complete an application and shall pay a \$100.00 annual registration fee to the City of Wichita Treasurer and shall pay all costs associated with the microchip procedure. If the dog's owner had a valid dog license, such owner shall not receive a

refund of the licensing fees paid for the altering or micro chipping of the dog. Upon the renewal of the license, the amount will be changed to reflect the altering and micro chipping of the dog. The owner, keeper or person harboring a dangerous dog shall notify the Health Officer in writing a minimum of seven days prior to any change in the address of the owner, keeper or person harboring the dog or the location of the dangerous dog. Any owner, keeper or harborer of a dangerous dog who fails to comply with this provision shall be deemed guilty of a misdemeanor.

(b) The owner, keeper or person harboring a dangerous dog required to be registered under this Section shall maintain liability insurance in the amount of one hundred thousand dollars for each such dog against the potential injury or damage liabilities and hazards associated with the ownership or possession of such dog. The owner or person harboring a dangerous dog shall file with the Health Officer a certificate of insurance reflecting the required minimum insurance ~~and naming the City of Wichita as an additional insured.~~ Any owner, keeper or harborer of a dangerous dog who fails to comply with this provision shall be deemed guilty of a misdemeanor.

Section 6. Section 6.04.052 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

Sec. 6.04.052. Restrictions on the ownership of Pit Bulls.

(a) All adult pit bulls within the City of Wichita are required to have an identification microchip implanted in the dog traceable to the current owner and registered with the City of Wichita. Such microchip information shall be included in the dog's annual license application with the City of Wichita. The owner, keeper or harborer shall pay all costs associated with the microchip procedure.

(b) It shall be unlawful for any person to own, ~~keep~~ ~~posses~~ or harbor an adult unaltered pit bull, unless such person is licensed as a dog breeder pursuant to Section 6.04.155. No licensed dog breeder shall own, keep or harbor, ~~possess or maintain~~ more than two unaltered adult pit bulls. Such dogs must be micro-chipped as required by this title. The provisions of this section shall not apply to any unaltered pit bull which was located within the City of Wichita as of July 1, 2009, ~~at the time the ordinance was enacted~~ and such dog was being utilized as: (1) a service dog to accommodate an individual with a disability recognized by the Americans with Disabilities Act, or (2) a show dog which has been certified to have been shown in a qualified show by December 31, 2009. No person shall own more than two such service dogs or show dogs, unless otherwise exempted in this title. Any person who owns such a show dog shall be required by March 31, 2010 to obtain a waiver from the Health Officer in order to retain the unaltered status of the pit bull. Such waiver shall be renewed on an annual basis under the guidelines specified by the Health Officer and shall cost the sum of \$50.00 per waiver per year. Waivers can be revoked by the Health Officer pursuant to the provisions of 6.04.157. Any such service dog or show dog must be micro-chipped as required by this title. Such person shall be required to obtain a breeder's license for such animal(s). Service dogs shall comply with all other provisions of this title. Sterilization of a pit bull described in this section, shall not be required upon certification, presented to the Director of Environmental Services, by a veterinarian licensed by the state of Kansas, that such sterilization would be injurious to such dog due to its health or age.

(c) It shall be unlawful for any person to own, ~~keep, maintain~~ or harbor more than two pit bulls unless otherwise exempted in this title.

- (d) It shall be unlawful for more than two adult pit bulls, to be owned, kept, harbored ~~or maintained~~ on the same premises or dwelling.
- (e) Any person who owns a pit bull, ~~at the time of passage of this ordinance~~ as of July 1, 2009, shall have six months ~~from the date of the passage of the ordinance~~ thereafter, to microchip and surgically sterilize such animal or apply for a breeder's license pursuant to this title, unless exempted under section (b) above. Sterilization of the pit bull shall not be required upon certification, presented to the Director of Environmental Services, by a veterinarian licensed by the State of Kansas that such sterilization would be injurious to such dog due to its health or age.
- (f) Any person who had a current animal maintenance permit or variance for three or more pit bulls, at the time of passage of the ordinance shall be permitted to keep, but not replace such dogs until their number equals no more than two dogs. Such dogs must be registered, micro-chipped and surgically sterilized in accordance with this title, unless otherwise exempted within this title.
- (g) Any person aggrieved by the determination of the Health Officer that a dog is a pit bull as defined by Section 6.04.010 of this title, shall have the right to appeal such determination as set forth in Section 6.04.158.
- (h) The provisions of this section shall not apply to dogs which are temporarily located within the City of Wichita for participation in dog shows which are sanctioned by the American Kennel Club, United Kennel Club, the Wichita Kennel Club or the American Dog Breeders Association., or unless otherwise recognized by the Health Officer.
- (i) Any individual who fails to comply with the requirements of this section shall be guilty of a misdemeanor.

Section 7. Section 6.04.060 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

Sec. 6.04.060. Animal bite violations.

(a) No person who owns, possesses, harbors or exercises control over any animal shall do the following:

1. Permit or allow the animal to attack or bite any person or domestic animal not on the premises of such owner, ~~possessor or~~ keeper or harborer;
2. Permit or allow the animal to attack or bite any person or domestic animal upon the premises of the residence of such owner, ~~possessor or~~ keeper or harborer upon the premises of any business establishment not then open to the public. It is an affirmative defense to this paragraph if such premises are previously posted at each entrance with a prominent and conspicuous sign warning all persons of the animal, and the animal is confined in a proper enclosure. It is also an affirmative defense to this paragraph that the attack or bite by the animal was necessary to prevent or apprehend a person engaged in committing an act of violence, robbery, theft or other crime upon the property;
3. Permit or allow the animal to attack or bite any person or animal upon the premises of any business establishment that is open to the public. It is an affirmative defense to this paragraph that the attack or bite by the animal was necessary to prevent or apprehend a person engaged in committing an act of violence, robbery, theft or other crime upon the property.

(b) For purposes of this section, the word "permit" shall mean allow or let happen. Knowledge or intention on the part of the person who owns, possesses, harbors or exercises control over the animal shall not be elements of this offense.

~~(c) An enclosure for purposes of this section means the dog is securely confined indoors or confined in a securely enclosed and locked pen or structure upon the premises of the owner of the animal. The pen or structure must have secure sides and a secure top attached to the sides. If the pen or structure has no bottom secured to the sides, the sides must be embedded into the ground no less than one foot.~~

~~(d)~~ (c) The provisions of this section shall not apply to any law enforcement officer who uses an animal while engaged in law enforcement activities, nor to any owner, ~~possessor or keeper or~~ harborer of any animal which attacks or bites a person engaged in physically attacking or striking such owner, ~~possessor or keeper or~~ harborer.

~~(e)~~ (d) Penalties for violation of this section:

1. Upon a first conviction of any violation of the provisions of this section, a minimum fine of \$150.00 shall be assessed.
2. Upon a second conviction within a twelve-month period, of any violation of the provisions of this section, a minimum fine of \$250.00 shall be assessed.
3. Upon a third or subsequent conviction, of a violation of any provisions of this section, a minimum fine of \$500.00 shall be assessed. In addition to the minimum fines set forth above, the Municipal Court Judge may impose a term of imprisonment not to exceed six months, and a fine not to exceed one thousand dollars.

Section 8. Section 6.04.070 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

Sec. 6.04.070 Procedures on retention, observation and disposition of animals which have bitten persons or other animals.

- (a) The owner of any animal, which has been determined by the Health Officer to have bitten a person or another animal shall confine the animal as directed by the Health Officer or surrender such animal to the Health Officer for rabies observation. The owner, keeper or harborer shall be responsible for the payment of any cost of such confinement and any additional fees relative to the confinement or maintenance of the animal. Any costs and/or additional fees assessed by the Health Officer shall be paid by the owner, keeper or harborer prior to the dog's release.

Section 9. Section 6.04.140 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

Sec. 6.04.140. Vaccination and identification tags.

- (a) The veterinarian administering the rabies vaccination shall issue a metallic tag for the particular dog vaccinated, on which tag shall be distinctly marked the veterinarian's name or veterinary clinic's name, address, and tag identification number. The year of issuance also shall be distinctly marked, which shall be the same as the year of vaccination or rabies certification for such animal. A new vaccination tag shall be issued ~~each year~~ in accordance with the procedures established in 6.04.110. The owner of any dog which is determined by the Health Officer to be running at large while not wearing a collar with identification consisting of the owner's name and current address, or if such dog is over five months old, a current rabies vaccination tag, is guilty of a misdemeanor.

Section 10. Section 6.04.155 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

Sec. 6.04.155. Dog breeder license; breeder inspections.

(a) No person shall be a dog breeder, as defined by Section 6.04.010, unless such person is properly licensed by the City of Wichita as a breeder.

(b) All dog breeders, shall make an application for, and obtain an annual dog breeder's license as established and described by this section.

1. An application for a breeder's license shall be obtained from the City Treasurer's Office, Environmental Services, Animal Services or the City of Wichita's website. The application shall contain the following information:

- a. The name, date of birth and address of the applicant;
- b. The name, breed, color, sex and age of all dogs owned by the applicant;
- c. Documentation that all animals are properly vaccinated and licensed;
- d. Name and address of the licensed veterinarian who is responsible for the care and treatment of the animals;
- e. A signed statement by the applicant that the information is true and correct;
- f. The permanent ID or microchip number of all animals owned, if available;
- g. A statement as to whether there is a fenced yard or fenced run available for the confinement of the dogs.
- h. A statement as to whether the applicant has ever had a license suspended or revoked which was issued by the State of Kansas pursuant to the Kansas Pet Animal Act. Such statement shall contain the date of any such suspension or revocation.

- i. The zoning classification for the premises where the animals will be maintained.
 - j. A copy of any current license issued to the applicant by the State of Kansas pursuant to the Kansas Pet Animal Act.
2. The Health Officer is empowered to establish administrative requirements for obtaining dog breeder licenses. Application forms and administrative requirements can be obtained through Animal Services, Environmental Services, City Treasurer, or the City website.
- (c) Approval of dog breeder licenses shall be contingent upon the applicant's compliance with all administrative requirements set forth by the Health Officer including, but not limited to, proper veterinary care, health certification of breeding stock and offspring, and compliance with all applicable requirements, and/or regulations of the City of Wichita and the State of Kansas.
- (d) The Health Officer may refuse to approve issuance or renewal of, or revoke, a breeder's license for one or more of the following conditions:
- 1. Failure of the applicant to provide proof that the animals are properly licensed and vaccinated – ;
 - 2. The making of any false statement as to any material matter in the application for a license, or a license renewal, or in a hearing concerning the license;
 - 3. Violation by the applicant of a provision of this title, the Kansas Pet Animal Act or any state or federal law relating to the care and treatment of animals – ;
 - 4. Suspension or revocation of a license issued by the State of Kansas pursuant to the Kansas Pet Animal Act ; or

5. The applicant has a history of allowing animals to run loose or escape, has otherwise been found to be neglectful, has had an animal identified as a nuisance, or has previously been determined to have violated the provisions of this title.

(e) No breeder's license shall be approved or renewed for premises zoned residential by the Wichita/Sedgwick County Unified Zoning Code.

(f) No breeder's license shall be approved for an individual who owns more than two unaltered pit bulls, unless otherwise exempted within this title. If the Health Officer refuses to issue or renew a license under this section, such individual shall have the appeal rights established by Section 6.04.158.

(g) The fee for a breeder license is established at fifty dollars annually. Such licenses shall expire one year from the date of issue. The City Treasurer shall impose a penalty of fifty dollars annually on all delinquent license renewals beginning thirty days following the expiration of the previous license. Failure by a person to obtain a breeder license as required by this section shall constitute a misdemeanor. Conviction of two or more violations of this code within a two-year period may result in revocation of the breeders' license. The individual shall be precluded from obtaining a breeder's license for a period of twenty-four (24) months following the revocation.

(h) All places and premises by licensed breeders or persons seeking approval for a breeder license as described by this chapter shall be open during reasonable hours for inspection by the Health Officer in order to ensure the health, safety, and welfare of the animals on said property. If upon such an inspection by the Health Officer any person who has been granted or applied for a license is found violating any of the regulations prescribed in this chapter, or any provisions within the Unified Zoning Code, or any administrative regulation established by the Health Officer, such

person shall be given a written notice of such violation. If such violation or violations of this code do not or can not cease within twenty-four hours of such notification, the permit, or license may be revoked or canceled by action of the Health Officer, pursuant to the procedures set forth in Section 6.04.159 of this code.

(i) It shall be unlawful for any breeder of pit bulls, as defined by this title, to engage in the breeding of such animals with an owner, keeper or harbinger of a pit bull involved in the breeding process who is not also licensed as a breeder.

(j) Upon a first conviction of a violation of the provisions of this section, a minimum fine of \$100.00 shall be imposed. Upon a second or subsequent conviction, of a violation of the provisions of this section, a minimum fine of \$250.00 shall be imposed. In addition, the Municipal Court Judge may impose a term of imprisonment not to exceed six months and/or a fine not to exceed one thousand dollars.

Section 11. Section 6.04.0157 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

Sec. 6.04.157. Maximum number of dogs and cats and maintaining livestock.

(a) No person shall ~~keep, own, keep or harbor or maintain~~ upon any premises or property, or in any dwelling of any type within the city:

1. livestock;
2. more than two dogs;
3. more than two cats;
4. more than two rabbits;
5. more than three fowl; or

6. more than three pigeons;

unless such person has a current Animal Maintenance Permit or variance issued by the Health Officer authorizing the maintenance of such animals. The provisions of this section shall not apply to common carriers transporting domestic animals to or through the City. Permits shall not be required for indoor non-commercial maintenance of fish, nonpoisonous amphibians and reptiles allowed by Section 6.04.040, birds and small rodents. Any individual who fails to comply with the requirements of this section shall be deemed guilty of a misdemeanor.

(b) No person shall keep, own, or harbor ~~or maintain~~, upon any premises or property or in any dwelling of any type within the city, more than three different kinds of domestic animals or livestock unless such person has a current animal maintenance permit or variance issued by the Health Officer authorizing the maintenance of such animals. Any individual who fails to comply with the requirements of this section shall be deemed guilty of a misdemeanor.

1. Any person, rescue organization or foster care home, who desires to own, keep, or harbor livestock, or more than two dogs or more than two cats or more than two rabbits, or more than three fowl or pigeons, shall ~~may~~ apply ~~to~~ with the City of Wichita ~~Treasurer~~ for an 'animal maintenance permit' that shall permit the applicant to own, keep or harbor the animals specifically allowed in that permit.

2. Any person, rescue organization or foster care home, who desires to own, keep or harbor ~~or maintain~~ more than three different kinds of domestic animals shall ~~may~~ apply with ~~to~~ the City of ~~Wichita~~ ~~Treasurer~~ for an animal maintenance permit that shall permit the applicant to own, keep or harbor ~~or maintain~~ more than three different kinds of domestic animals.

TABLE 1:

TABLE INSET:

KIND OF ANIMAL	MINIMUM REQUIRED FOR PERMIT	MAXIMUM ALLOWED WITH PERMIT	PERMIT FEE
Dogs, excluding pit bulls	3	4	\$25.00
Cats	3	4	\$25.00
Fowl	4	12 (25 pigeons)	\$25.00
Sheep	1	One animal per acre	\$100.00
Goats--(Nannies only)	1	One animal per acre	\$100.00
Horses	1	One animal per acre	\$100.00
Cattle	1	One animal per acre	\$100.00
Ratites	1	One animal per acre	\$100.00
Pig--Neutered, miniature Vietnamese Pot-Bellied	1	1	\$25.00
Rabbits	4	12	\$25.00
Other	3	(25 fur-bearing animals, i.e. chinchilla, mink)	\$100.00

Owning more than three kinds of animals, regardless of number of animals, requires the owner to obtain an Animal Maintenance Permit. Any combination of permit fees will not exceed \$100.00 per application. If a permit application is denied, 50% of the proposed permit fee will be retained for the administrative costs incurred.

3. It is unlawful for any person to own, harbor or maintain more animals or different types animals than is allowed by the Animal Maintenance Permit issued to such person by the Health Officer.

4. The Health Officer is empowered to establish administrative requirements for obtaining an Animal Maintenance Permit. Application forms and administrative requirements can be obtained through Animal Services, Environmental Services, City Treasurer or the City website.

The application shall contain the following information:

- a. The name, date of birth and address of the applicant;
- b. The name, breed, color, sex and age of all animals owned by the applicant;
- c. Documentation that all animals are properly vaccinated and licensed;
- d. Name and address of the licensed veterinarian who is responsible for the care and treatment of these animals;
- e. A signed statement by the applicant that the information is true and correct;
- f. The permanent ID or microchip number of all animals owned, if available;
- g. A statement as to whether the animals are spayed or neutered and whether there is a fenced yard or fenced run available for the confinement of the animals.
- h. The size of the premises in which the animals may be maintained.
- i. A diagram of the location of any and all domestic animal structures in which animals will be maintained.
- j. A signed statement on behalf of the applicant that maintenance of the animals will be in compliance with the animal control and sanitary waste requirements of the City of Wichita.
- k. A statement by the applicant that the zoning requirements of the Unified Zoning Code of the City of Wichita and Sedgwick County will be complied with.

l. A statement as to whether the applicant has ever had a license suspended or revoked which was issued by the State of Kansas pursuant to the Kansas Pet Animal Act. Such statement shall contain the date of any such suspension or revocation.

m. A copy of any current license issued to the applicant by the State of Kansas pursuant to the Kansas Pet Animal Act.

5. ~~4.~~ Approval of an Animal Maintenance Permit shall be contingent upon the applicant's compliance with all administrative requirements set forth by the Health Officer, the provisions of this title and the rules and the rules and regulations of the City of Wichita and the State of Kansas. Such applicant must show:

a. that the keeping of additional animals will not create a nuisance in the surrounding neighborhood, that humane care will be provided and that the premises where the animals are kept is suitable for the keeping of multiple animals and is in conformity with all City zoning requirements. The criteria to be evaluated include, without being limited to, the following:

- 1) That the animals will be kept or maintained at all times in a safe and sanitary manner.
- 2) That the quarters in which such animals are kept or confined will be adequately lighted and ventilated and are so constructed and maintained that they can be kept in a clean and sanitary condition.
- 3) That the health and well-being of the animals will not in any way be endangered by the manner of keeping or confinement.
- 4) That the keeping of such animals will not harm the surrounding neighborhood or disturb the peace and quiet of the surrounding neighborhood.

- 5) That the keeping of such animals will not cause fouling of the air by offensive odors and thereby create or cause unreasonable annoyance or discomfort to neighbors or others in close proximity to the premises where the animals are kept or harbored.
- 6) That the animals will not unreasonably annoy humans, endanger the life, health or safety of other animals or persons or substantially interfere with the rights of citizens to the enjoyment of life or property.
- 7) That the animals will not make disturbing noises, including but not limited to, continued and repeated or untimely howling, barking, whining or other utterances causing unreasonable annoyance, disturbance or discomfort to neighbors and others in close proximity to the premises where the animals are kept or harbored, or otherwise be offensive or dangerous to the public health, safety or welfare, by virtue of their behavior, number, type or manner of keeping.
- 8) That the applicant, or any person who will share in the care, custody and control of the animals, is not currently in violation of, or has not previously violated any applicable City, state or federal laws, codes, rules or regulations, including, but not limited to, those pertaining to the care and control of animals and the maintenance of their property, which would reflect adversely on their ability to fully comply with the conditions of the subject permit.

b. The Health Officer may deny any application where any one or more of the following conditions exist:

- 1) The applicant fails to show proof of the aforementioned requirements or an examination of the documentation submitted by the applicant;
- 2) An investigation by Animal Services reveals that the applicant has failed to meet the requirements of this section.

- 3) The applicant made a false statement as to any material matter in the application for a license of a license renewal, or in a hearing concerning the license.
 - 4) Violation by the licensee or applicant of a provision of this title, the Kansas Pet Animal Act or any state or federal law relating to the care and treatment of animals.
 - 5) If the applicant has had a breeder's license or animal maintenance permit revoked within eighteen (18) months prior to the application.
 - 6) If the applicant has had a license issued by the Kansas Department of Animal Health suspended or revoked within eighteen (18) months prior to the application.
 - 7) Maintenance of the animals would be in violation of the Unified Zoning Code of the City of Wichita.
 - 8) No Animal Maintenance Permit shall be issued to own, keep, ~~own~~ or harbor more than two adult pit bull dogs.
 - ~~9) No Animal Maintenance Permit shall be issued to own, keep, or harbor, by the owner of the property, more than four adult dogs, as defined by the Unified Zoning Code, on premises which are zoned residential, without a zoning variance for such kennel being granted by the Board of Zoning Appeals.~~
 - ~~9) 10)~~ The applicant has a history of allowing animals to run loose or escape, has otherwise been found to be neglectful, has had an animal identified as a nuisance, or has previously been determined to have violated the provisions of this title.
- c. The Health Officer shall state, in writing, the factual basis for his or her recommendation to grant or deny any application. The Health Officer shall consider past violations, the size, condition and location of the area where the animals will be kept, the size of the animals to be kept, past

complaints concerning the applicant, the burden of proof and the criteria set forth in this section, or any other factors relative to the issue of keeping additional animals.

The permit shall be issued for the period not to exceed twelve (12) months.

d. The fee for such Animal Maintenance Permit shall be paid in accordance with Table 1 of Subsection (b)(2). All fees shall be nonrefundable and nontransferable. The Animal Maintenance Permit shall be issued for the individual animals listed on the application and shall not be transferable to other animals. The fact an individual has previously been issued an animal maintenance permit may be considered but shall not be controlling to the Health Officer's decision to issue animal maintenance permit for a different animal.

The denial of any Animal Maintenance Permit shall be subject to the appeal procedures set forth in Section 16.04.158.

e. Any applicant who had more than two cats or more than two dogs or livestock prior to annexation of their property by the City, ~~or the passage of this ordinance,~~ shall be permitted to keep but not replace said animals until their number equals the number of animals permitted by Section 6.04.157(a). Any such applicant shall be required to apply for an Animal Maintenance Permit and be required to pay a yearly renewal fee, provided that nothing in this section shall exempt or except any applicant or any other person from the registration, vaccination or any other requirement of this chapter.

f. Any individual who had a current Animal Maintenance Permit or variance at the time of passage of this ordinance shall be permitted to keep but not replace said animals until their number equals the number of animals permitted by Section 6.04.157(a). Any such applicant shall be required to apply for an Animal Maintenance Permit and be required to pay a yearly renewal

fee, provided that nothing in this section shall exempt or except any applicant or any other person from the registration, vaccination or any other requirement of this chapter.

g. Any individual who had a current Animal Maintenance Permit or variance for livestock at the time of passage of this ordinance shall be permitted to keep but not replace said animals. Any such applicant shall be required to apply for an Animal Maintenance Permit and be required to pay a yearly renewal fee, provided that nothing in this section shall exempt or except any applicant or any other person from the registration, vaccination or any other requirement of this chapter.

h. For the purposes of this section:

1) *Nuisance* for the purposes of this section, shall be defined as any act which is unreasonably annoying or vexatious to another or substantially interferes with the rights of others and shall include, but not be limited to, obnoxious odors, excessive noise, and creation of an environment attractive to other animals or insects. More than three substantiated violations of this title within a twelve-month period will automatically constitute a nuisance.

2) *Humane standards of care* shall be defined to include, but not be limited to, accessibility of the animal to food and water, proper medical attention, proper shelter from the elements, and cleanliness in animal waste areas with regular waste removal.

3) *Livestock* includes, but is not limited to: horses, mules, cattle, sheep, llamas, ratites and goats.

i. Not more than one head of livestock shall be kept for each one acre of contiguous unbuilt land area, provided that the limitation shall not apply to a commercial riding stable, a riding academy, or a commercial stockyard with an approved manure disposal plan.

- j. Owners of livestock within the City without an Animal Maintenance Permit or variance on the date of the passage of this ordinance shall be allowed twelve months from the date of adoption to come into compliance with the acreage requirements set forth in subsection (1).
 - k. Owners of livestock within the City with a current Animal Maintenance Permit or variance at the date of the adoption of the ordinance shall be permitted to keep, but not replace said animals.
 - l. All owners or harborers of livestock must comply with the provisions of Section 6.04.173 regarding the maintenance of all domestic animal structures.
 - m. The holder of an Animal Maintenance Permit will provide, upon request of the Health Officer, proof of licensure where applicable, and vaccination of any animals subject to the Animal Maintenance Permit.
 - n. The premises designated in the animal maintenance permit shall be available for inspection by the Health Officer to ensure compliance with the provisions of this code and the laws of the State of Kansas.
 - o. The holder of an animal maintenance permit will notify the Health Officer if any of the animals subject to the animal maintenance permit is no longer owned by the individual. Any individual who fails to comply with the requirements of this section shall be deemed guilty of a misdemeanor.
6. 5. Variances: Any application for a variance to own, keep, or harbor ~~or possess~~ more than four (4) dogs or four (4) cats or any combination thereof in excess of four (4) or for a variance to the requirements of this chapter based on physical or geographical features of the site, or required acreage for livestock, may be granted by the Director of Environmental Services if he or she

determines that the variance will not adversely affect public health and safety or the environment, pose a threat to the environment or constitute a nuisance to neighbors.

a. The applicant shall complete an application form and pay all applicable fees for an animal maintenance variance. Such application shall include the information set forth in the application for an Animal Maintenance Permit. In addition to the fees set forth in Subsection (b)(2), the applicant shall pay an initial inspection fee of \$50.00 to the City of Wichita ~~Treasurer~~. No inspection fee shall be assessed for subsequent renewals of any variance.

b. In making the determination as to whether the variance request should be granted, the Director of Environmental Services shall rely on the criteria set forth in subsection (4) of this section.

~~c. No variance shall be issued to own, keep, own or harbor by the owner of the property, more than four adult dogs, as defined by the Unified Zoning Code on premises which are zoned residential, without a zoning variance for such kennel being granted by the Board of Zoning Appeals.~~

~~c.~~ d. The Director shall notify the applicant for the variance of his or her determination of the request in writing stating the basis for any denial and any conditions placed on any granted variance request. Individuals aggrieved by any decision of the Director of Environmental Services relative to waivers may appeal to the City Council within ten days of the notice of such decision pursuant to Section 6.04.210 of this Code.

SECTION 12. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this _____ day of
December, 2009.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

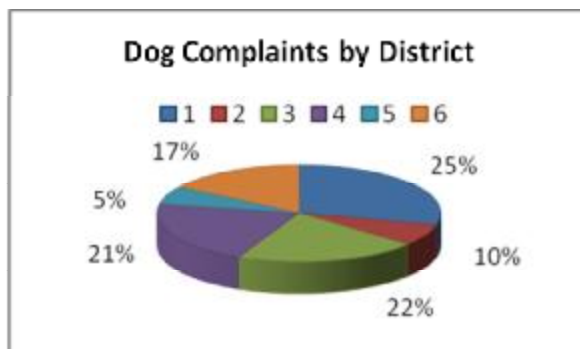
Approved as to Form:

Gary E. Rebenstorf
Director of Law

Animal Services – Dog Statistics Report

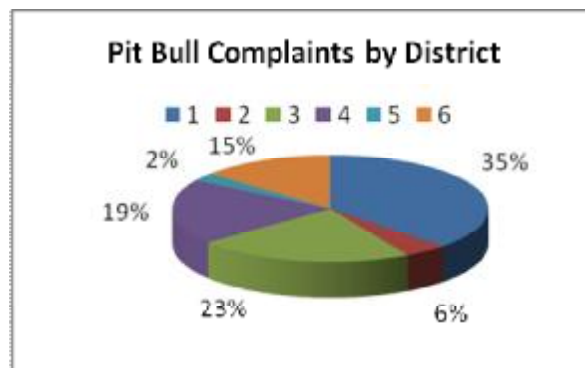
Dog Control Statistics YTD thru October															
All Dogs	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	YTD	2008
Dog complaints	933	784	988	1082	1132	1278	868	862	731	888				9546	10,793
Dogs impounded	419	407	413	377	447	546	747	588	635	549				5,128	6,026
Dogs euthanized	186	158	239	179	215	292	387	273	283	248				2,460	3,407
Percentage dogs redeemed	22%	32%	28%	28%	28%	24%	20%	22%	22%	24%				24%	25%
Dogs running at large	326	320	309	301	367	387	688	536	571	410				4215	4,617
Dog attacks* investigated	15	32	20	37	20	32	37	49	25	9				276	252
Dog bites* investigated	41	39	62	45	35	52	56	48	34	49				461	481
Dogs deemed dangerous**	7	13	11	14	0	11	4	6	3	7				76	75
Pit Bulls	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Total		
Pit bull complaints	218	190	237	260	267	305	203	207	177	203				2267	2,523
Pit bulls impounded	126	117	147	97	115	90	213	189	202	163				1,459	1,575
Pit bulls euthanized	98	69	102	69	80	58	151	125	145	116				1,013	1,255
Percent Pit bulls redeemed	14%	29%	27%	21%	19%	19%	16%	16%	13%	16%				18%	13%
Pit bulls running at large	109	94	122	87	101	73	197	177	182	155				1,297	1,279
Pit bull attacks* investigated	11	18	16	22	12	22	20	15	13	7				156	118
Pit bull bites* investigated	12	12	20	16	4	24	15	13	6	17				139	128
Pit bulls deemed dangerous**	5	9	10	12	0	9	4	6	2	7				64	41

Complaints involving dogs by Council District Jan-October 2009



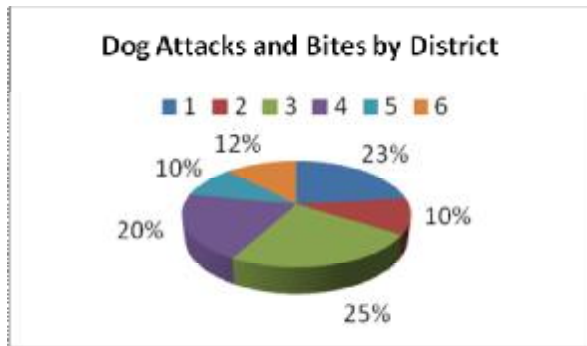
Animal Services has responded to 9546 dog complaints YTD. Percentages of dog complaints by Council District were:

- District 1 25%
- District 2 10%
- District 3 22%
- District 4 21%
- District 5 5%
- District 6 17%



Animal Services responded to 2267 complaints involving pit bulls Through October of 2009. 24% of all dog complaints involved one or more pit bulls. Percentages of pit bull complaints by Council District were:

- District 1 35%
- District 2 6%
- District 3 23%
- District 4 19%
- District 5 2%



Animal Services has investigated 737 dog attack and bite reports so far in 2009. Seventy-six dogs have been deemed dangerous YTD.

- 40% of dog attacks and bites involved pit bull dogs.
- 84% of the dogs deemed dangerous were pit bulls.
- 30% of all dog bites were caused by pit bull dogs.

Wichita Police Department Report Jan-October 2009

WPD Dog Encounters 2004-2009 YTD					
	2005 Actual	2006 Actual	2007 Actual	2008 Actual	YTD 2009
Total Animal shooting incidents	48	30	55	43	27
Number of dogs encountered	40	23	53	22	13
Number of pit bull dogs encountered	32	17	46	21	13
Number of dogs killed	21	11	23	13	9
Number of dogs injured	11	4	14	7	3
Number of incidences in Patrol North	20	11	25	13	4
Number of incidences in Patrol East	11	5	9	10	3
Number of incidences in Patrol West	14	8	11	15	11
Number of incidences in Patrol South	3	6	10	6	9

Trends

For 2009 officers were dispatched to 13 calls involving dogs that resulted in the officer discharging a weapon. Pit bulls or Pit bull mixes made up 100% of the dogs encountered by the officers.

Summary of pit bulls encountered by Wichita PD 2005 through 2009 YTD

- In 2005 80% of all dogs encountered by PD were pit bull dogs.
- In 2006 74% of all dogs encountered by PD were pit bull dogs.
- In 2007 87% of all dogs encountered by PD were pit bull dogs.
- In 2008 95% of all dogs encountered by PD were pit bull dogs.
- From January – October 2009 100% of all dogs encountered by PD requiring the use of a firearm were pit bull dogs.



ENVIRONMENTAL SERVICES

Interoffice Memorandum

TO: Mayor and City Council Members
FROM: D. Kay Johnson, Environmental Services Director
COPY: Robert Layton, City Manager
Karen Sublette, City Clerk
SUBJECT: Revision to Chapter 6.04 Animal Control and Protection
DATE: December 9, 2009

This memo is provided as: 1) an update on the March 2009 Animal Code ordinance revision and 2009 dog and pit bull activities from January to October, 2009, and 2) to discuss Environmental Services' proposal to revise Chapter 6.04 Animal Control and Protection.

- 1) In March 2009, the Council approved extensive changes to Chapter 6.04 Animal Control and Protection. Among other things, major revisions included **amendments to allow flexibility with the animal rabies vaccination schedule and to impose restrictions on the ownership of pit bulls.** The revised ordinance provided for a lengthy and phased implementation process so that some provisions were effective July 1, 2009 and remainder will become effective January 1, 2010. This approach allowed for a reasonable amount of time for public compliance. Also during this time period, Environmental Services worked to educate the regulated community including affected organizations on specific rules and worked with other City departments including Law, Office of Central Inspection, and Licensing, to establish appropriate administrative procedures.

During ordinance discussions in March 2009, the Council requested that Environmental Services periodically provide an update on the effectiveness of ordinance changes. The Animal Services Dog Statistics Report for 2009 (January to October) is attached. No improvements regarding pit bull activities have been experienced by the department during 2009 but these results were somewhat expected. Pit bull restrictions don't go into effect until January 1, 2010. It is notable, however, that with only ten months of information for 2009, pit bull concerns are up in almost all categories. Three targeted measures include the following:

	<u>2008</u>	<u>2009</u> (Jan. – Oct.)
Pit bulls running at large:	1,279	1,297
Pit bulls investigated for attack:	118	156
Pit bulls investigated for bites:	128	139

Also, during the first ten months of 2009, 100% of all dogs encountered by the Wichita Police Department requiring the use of a firearm (13) involved pit bulls (13). These statistics demonstrate that Wichita's dangerous dog ordinance has not influenced or reduced pit bulls running at large, attacks and bites.

- 2) During the course of the year, ordinance issues were identified and it is now

recommended that corrections be approved before the final January 1, 2010 effective date. Therefore, Environmental Services is proposing a second 2009 revision to Council on December 15 to address areas for clarity and ordinance enhancement. A chart, Summary – Proposed Modifications of Chapter 6.04, is attached. A delineated and highlighted code revision is also attached. Significant sections that are recommended for change are listed below:

1. The section on animal fighting needs to be revised. A new state law was enacted making animal fighting a felony so certain city provisions for misdemeanor class animal fighting penalties need to be deleted.
2. The clause requiring \$100,000 in liability insurance for owners of dangerous dogs needs to be amended. Currently, the code requires the dangerous dog owner to name the City of Wichita as an additional insured. The Law Department has determined that the existing language increases the City's liability beyond \$100,000.
3. A new amendment requiring owners to fund animal costs is needed. ES proposes to establish a renewable cash or performance bond requirement payable by owners of dogs deemed dangerous and being held by the City pending dangerous dog determinations. Quite often dogs that have been deemed dangerous by Animal Services must be held in the City's shelter until the owner can demonstrate compliance with the Dangerous Dog Order. This period can last several weeks while an owner builds a special pen or makes other special arrangements to contain a dangerous dog. Another lengthy animal impound situation can occur when appeals are filed by an owner. Requiring a bond will help Animal Services ensure that housing costs can be recovered by the City.
4. A new amendment to limit Animal Maintenance Permit (AMP) fees to \$100 per application and a method to recover department resources if an owner's application for an AMP is denied are both needed. Ordinance language is currently not clear and could be confusing for owners. This limitation prevents an applicant from being charged for more than one type of AMP fee per application. This change also establishes the department's ability to recover costs incurred for processing AMP applications that are denied by retaining fifty per cent of the AMP fee upon a permit application denial.
5. A new amendment for a show dog waiver for pit bulls is proposed. Citizens owning show dogs have requested a change to **the City's new code**. The ordinance, beginning January 1, 2010 restricts ownership to no more than two pit bull dogs; to have all pit bulls micro-chipped; and to have either one or two pit bulls spayed/neutered or, if the owner desires to maintain one or two unaltered pit bulls, the owner is required to obtain a breeder's license. Some show dog owners state that they are not breeders. However, all "show organizations" require animals be maintained intact or unsterilized. **Therefore, ES proposes a waiver that will grandfather pit bull dogs that qualified as show dogs prior to January 1, 2010 by establishing a variance from the existing pit bull spay/neuter requirements so that they may continue to be utilized as show dogs. The waiver must be obtained by March 1, 2010. All other pit bull rules apply and pit bull owners must obtain a breeder's license if they breed a pit bull show dog.**

Other proposed changes listed in the delineated draft ordinance include revising language for clarity or for consistency with other sections within Chapter 6.04 but do not pose any significant changes in the scope or intent of the ordinance.

Attachments:

Animal Services 2009 Dog Statistics Report - January through October 2009
12 8 2009 Proposed Changes to Chapter 6.04 Delineated, Highlighted version



ENVIRONMENTAL SERVICES

Summary - Proposed Modifications to Chapter 6.04, Animal Protection and Control - December 2009		
Section	Change	Reason
6.04.010 (g) Pg. 3 and others	Adds the word “charging” to the definition of “attack”.	Clarifies definition to aide in enforcement and prosecution.
6.04.010 (m) 2,4 Pg. 4,5 and others	Adds word “criminal” to the trespass clause in “dangerous dog” definition (and other sections of 6.04).	Clarifies definition to aide in enforcement and prosecution.
6.04.010 (p) Pg. 5	Changes the word “more” to “two” in reference to how many pit bulls may be owned according to the definition of “dog breeder”.	Provides clarity and consistency with regulations.
6.04.010 (qq) Pg. 10	Adds wording, “a secure top attached to the sides” to definition of “secure enclosure”.	Provides clarification for compliance with pen requirements.
6.04.040 (a) Pg. 12,13, 14 and others	“Keeper” added to wording of subsection “a” (and other sections within 6.04) for clarification.	Provides consistency with definition of “owner”
6.04.040 (e) 3 Pg. 15	Removes misdemeanor animal fighting wording because state law was amended to make animal fighting a felony.	Animal fighting is required to be prosecuted as a felony according to state law.
6.04.045(b)3 Pg. 20-21	Requires owners of dogs deemed dangerous to post a renewable thirty day cash or performance bond, to cover the cost of care for the animal through the appeals process.	Ensures cost recovery for the city. Dangerous dogs are held by the shelter until owners are in compliance with the dangerous dog order. For owners that appeal the determination, costs continue to accrue for the owner of the impounded dog throughout the appeals process. The bond helps ensure the city will recover costs incurred for the animal during such impoundment.
6.04.046(g)3 Pg. 23	Removes exemption allowing ownership of more than two dangerous dogs for those prior to previous ordinance passage.	Eliminates unnecessary wording from ordinance- no owner currently owns more than two dangerous dogs.

6.04.048(b) Pg. 24	Removes naming the city as additional insured on dangerous dog ownership liability insurance.	Helps eliminate the city's liability beyond \$100,000.
6.04.052(b) Pg. 25, 26	Adjusts wording for service dog exceptions from pit bull restrictions. Grandfathers existing pit bull show dogs from spay/neuter requirements by issuance of annual variance for qualified show dogs.	Clarifies exception - pit bull service dogs being utilized prior to July 1, 2009 do not have to be surgically sterilized. Provides exception for existing qualified pit bull show dogs prior to January 1, 2010 so owners can continue to show them.
6.04.052(c-f) Pg. 26 and others	Adds wording, "unless otherwise exempted in this title" to pit bull restrictions.	Provides language consistent with codified exceptions to pit bull restrictions.
6.04.060(c) Pg. 28	Removes language pertaining to enclosure requirements for housing dangerous dogs.	Eliminates duplicative language (stated in previous sections).
6.04.070(a) Pg. 29	Adds language to section requiring owners to pay shelter fees.	Clarifies owners' responsibility for payment of fees related to care of animals while impounded.
6.04.155(d) Pg. 31	Adds ability to "revoke" breeder licenses base upon listed conditions.	Establishes authority.
6.04.155(e) Pg. 32	Adds the word "renew" to language making it unlawful to approve Breeders Licenses in residentially zoned areas of the city.	Further ensures intent of the existing code prohibiting breeding in residentially zoned areas of the city.
6.04.157(b) 2 Pg. 36	Limits Animal Maintenance Permit (AMP) fees to a maximum of \$100 per application for any combination of animals. Fifty percent of AMP fee will be retained for administrative costs when application is processed and denied.	Ensures maximum fee so applicants won't be overcharged. Provides recovery of administrative costs for processing applications.
6.04.157(b) 5,b,9) Pg. 39,40	Removes language that AMP shall not be issued for more than four dogs without UZC variance.	Eliminates unnecessary wording from ordinance as regulations already limit owners to four dogs.
6.04.157(b) 6,c Pg. 43	Removes language that variances shall not be issued allowing more than four dogs without UZC variance.	Eliminates unnecessary wording from ordinance as regulations already limit owners to four dogs.
*Others not specified		

*This chart does not include every proposed change to the ordinance. Others not specified include various minor changes proposed for the purpose of providing consistent wording with other sections of Title 6 and for the purpose of providing clarity for the reader. Such changes not included in the chart do not modify the scope or intent of the existing ordinance.

City of Wichita
City Council Meeting
December 15, 2009

TO: Mayor and City Council

SUBJECT: CON2009-00032 – Conditional Use for wrecking/salvage yard on property zoned GI Limited Industrial (“GI”); generally located south of 21st Street North and east of Topeka Avenue. (District VI)

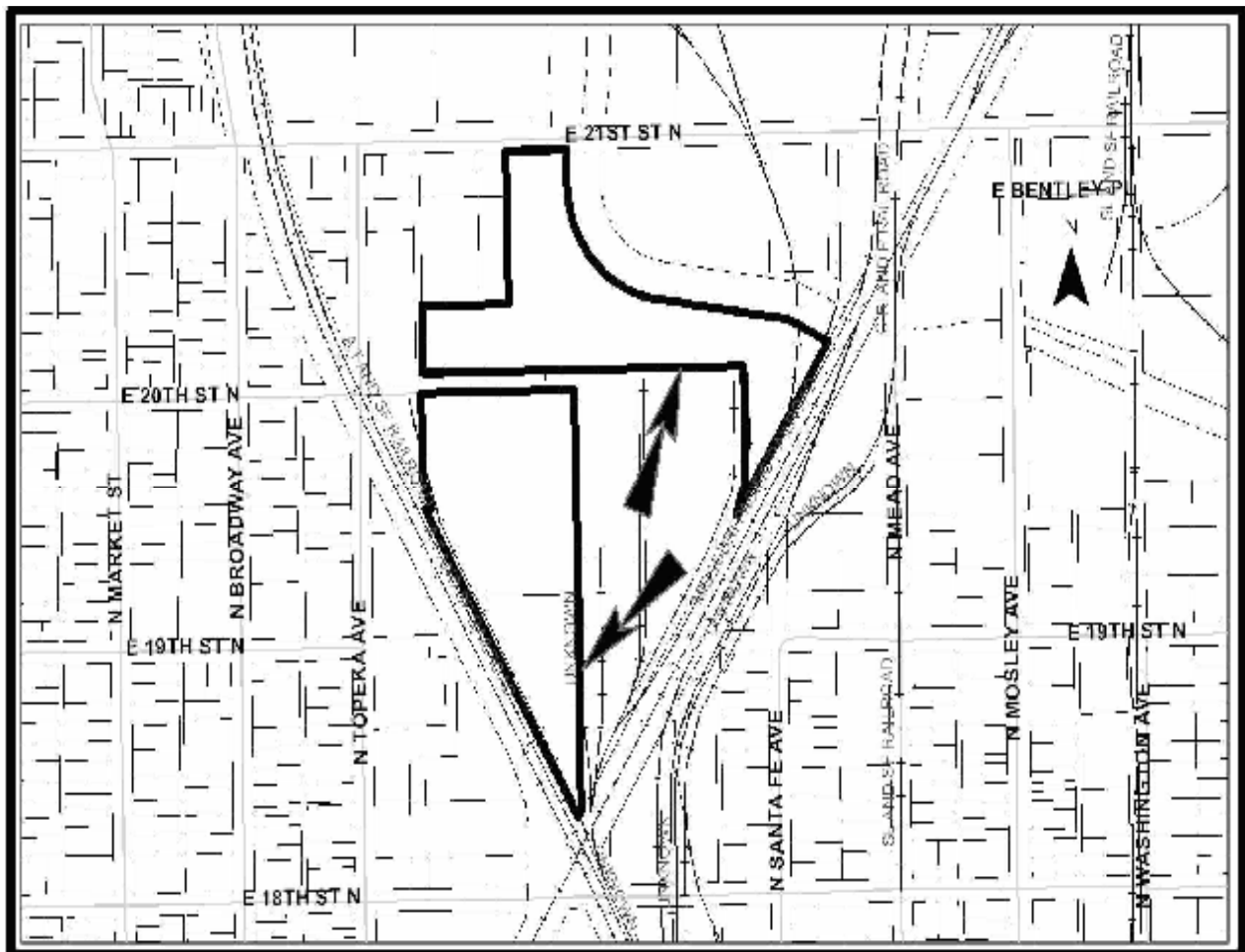
INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Non-Consent)

MAPC Recommendations: Approve (8-3), with conditions.

MAPD Staff Recommendations: Approve, with conditions.

DAB I Recommendation: Approve unanimously (5-0), with conditions.



Background: The applicant is requesting a Conditional Use to permit wrecking and salvage on the GI General Industrial (“GI”) zoned 14.7-acre site located south of 21st Street North, between Topeka and Mead Streets. The applicant proposes to reduce the salvaged material/metal by torch cutting and crushing, and then bale, store and ship the scrap material/metal. A mobile shear may be added later. Shipping off of the site will be done by truck and rail. The applicant does not propose to sell vehicle parts, scrap metal or appliance parts off of the site.

The Unified Zoning Code (UZC, Art II, Sec II-B.14.r) definition of a “wrecking/salvage yard” includes the proposed use: “...a lot, land, or structure used for the collecting, dismantling, storing, and/or salvaging of machinery, equipment, appliances, inoperable vehicles, vehicle parts, bulky waste, salvage materials, junk, or discarded materials; and/or for the sale of parts thereof. Typical uses include motor vehicle salvage yards and junkyards.” The UZC, Art III, Sec III-D.6.e, requires a Conditional Use for a wrecking/salvage yard in the GI zoning district, with the following conditions:

- (1) Is not abutting an arterial street, expressway, or freeway;
- (2) In the opinion of the Planning Director, will not adversely affect the character of the neighborhood; and
- (3) Is enclosed by a fence or wall not less than eight feet in height and having cracks and openings not in excess of five percent of the area of such fence.

The site plan shows an 8-foot screening fence (steel) around the entire site. The site plan shows an office located off of the north portion of the site, along 21st Street North. The office has a 3-bay door garage attached to it. The site itself is proposed to be located 150 to 170 feet, or more, south of 21st Street North, thus it will not be abutting an arterial street, expressway or freeway. The applicant proposes to install a rail spur to allow the crushed vehicles/scrap metal to be shipped off the site by train. There will be drop offs at this site from either the public or other businesses. Open-top gondola trailers and open- top tractor trailers will be on the site to hold scrap for shipping. Existing lights will be used and security cameras will be put around the site. Initially, the applicant proposed to be open Monday to Friday, 7:30 A.M. to 5:00 P.M. and have six to eight employees on the site. Just prior to the MAPC meeting, the applicant asked to be open on Saturday as well. Staff agreed to the change and advised the MAPC of the request.

Currently, the southern, unplatted portion of the site is vacant. The platted, northern portion of the site is partially filled with wrecked, inoperable automobiles/motor vehicles, some trailers and miscellaneous junk stored on a dirt, gravel and weedy storage area. There is no solid screening around this northern portion of the site or the vacant southern portion of the site. Staff could not find a previous Conditional Use for a wrecking and salvage yard on the site; however, aerials of the site (from 1997 to 2008) show both the northern and southern portions of the site to have been used as a wrecking and salvage yard.

The northern and southern portions of the site are separated by 20th Street North, a local, dirt and gravel public road, with 30 to 50 feet of right-of-way (ROW). 20th Street North crosses railroad tracks, which run along the west side of the southern portion of the site and continue west crossing Topeka to its intersection with Broadway Avenue. Broadway is a paved, curbed, four-lane minor arterial. Topeka is a paved, two-lane local street. 20th Street North ends at the grain elevators abutting the eastern side of the southern portion of the site.

The area around the site is zoned GI. Development along 21st Street North from Broadway Avenue to I-135, consists of: auto salvage yards, metal recycling yards, junk yards, wholesale used tires, office/warehouse, used car sales, auto repair, a day reporting center (CON2001-56, the most recent development in the area), old self storage, vacant land and empty buildings. Staff found no case history on the neighboring existing auto salvage yards and junk yards in the area; these facilities do not appear to be in compliance with the UZC. The 1997, 2000, 2003 and 2006 aerials show junk yards and auto salvage yards of varying sizes in the area. There are active railroad tracks throughout the area, including one that

separates Broadway from this area. The Nomar International Market (PUD-31) is located on the west side of Broadway.

The site is located within the 21st Street North Corridor Revitalization Plan, within its “Central Sub-Area.” The Plan’s 20+ year land use plan shows the site to be located in the General Industrial category. The General Industrial category is for heavy industrial uses that are rail dependent; the proposed use fits into this category.

Analysis: DAB VI heard this request at their November 2, 2009, meeting. There were no protests at the DAB meeting. The DAB recommended approval (5-0) of the Conditional Use request, with Staff’s recommended conditions.

At the November 5, 2009, MAPC public hearing, the MAPC voted 8-3 to approve the requested Conditional Use. However, they did vote to eliminate the facility’s recommended days and hours of operation (Monday to Saturday, 7:30 A.M. to 5:00 P.M), which would now allow the facility to operate 24 hours a day, seven days a week; see attached resolution. There were no protests at the MAPC meeting.

At the end of the two-week protest and appeal period, valid protests to the Conditional Use request were filed. These protests total 19.55% of the net land area within the 200-foot protest area. Because the protests total is less than 20% of the net land area within the 200-foot protest area, a simple majority vote of the City Council members is all that is needed to approve the applicant’s requested Conditional Use.

Financial Considerations: None.

Goal Impact: Promote Economic Vitality and Affordable Living.

Legal Considerations: The resolution has been reviewed and approved as to form by the Law Department.

Recommendation/Actions:

1. Concur with the findings of the MAPC and approve the Conditional Use request, subject to the recommended conditions (simple majority vote required); or
2. Deny the Conditional Use request by making alternative findings, and override the MAPC’s recommendation (it requires a two-third majority vote to override the MAPC’s recommendation); or
3. Return the case to the MAPC for further consideration with a statement specifying the basis for the Council’s failure to approve or deny the application (simple majority vote required).

RESOLUTION No. 09-387

A RESOLUTION AUTHORIZING A CONDITIONAL USE PERMIT FOR A WRECKING/SALVAGE YARD, ON APPROXIMATELY 14.7-ACRES ZONED GI GENERAL INDUSTRIAL ("GI"), GENERALLY LOCATED SOUTH OF 21ST STREET NORTH AND EAST OF TOPEKA AVENUE, IN THE CITY OF WICHITA, SEDGWICK COUNTY, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-D, AS ADOPTED BY ORDINANCE NO. 44-975, AS AMENDED.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, SEDGWICK COUNTY, KANSAS:

SECTION 1. That after receiving a recommendation from the Wichita-Sedgwick County Metropolitan Area Planning Commission, and after said Planning Commission has given proper notice and held a public hearing as provided by law, and under authority granted by Section V-D of the Wichita-Sedgwick County Unified Zoning Code, a Conditional Use to permit a Wrecking/Salvage Yard on approximately 14.7-acres zoned GI General Industrial ("GI") legally described below:

Case No. CON2009-00032

A Conditional Use Permit to allow a Wrecking/Salvage Yard, on approximately 14.7-acres zoned GI General Industrial ("GI") described as:

Lot 1, Block 1, Wichita Stockyard Addition, an addition to Wichita, Sedgwick County, Kansas, TOGETHER WITH,

A tract in the Northwest Quarter of Section 9, Township 27 South, Range 1 East of the 6th Principal Meridian, Wichita, Sedgwick County, Kansas, described as:

BEGINNING 546.7 feet east and 661.7 feet south of the Northwest Corner of Section 9; thence east along a line parallel to the north line of said Section 9, a distance of 446.3 feet; thence south along a line parallel to the west line of said Section 9, a distance of 30 feet; thence east along a line parallel to the north line of Section 9, a distance of 3 feet; thence south along a line parallel to the west line of said Section 9, a distance of 1,066.05 feet; thence along a line forming an angle of 26 degrees, 15 minutes to the left from the above course a distance of 5 feet, more or less, to the west line of the right of way of the Missouri Pacific Railway Company; thence in a southwesterly direction along the west line of said right of way to the point of intersection of said west line of said right of way and the east line of the right of way of the Atchison, Topeka and Santa Fe Railway Company a distance of 933.15 feet; thence east along a line parallel to the north line of said Section 9, a distance of 20.35 feet; thence in a northwesterly direction with an angle to the right of seventy-five degrees, 27 minutes a distance of 87.95 feet; thence north with a deflection angle to the right of fourteen degrees, fifty-nine minutes a distance of 220.8 feet to the PLACE OF BEGINNING; Generally located south of 21st Street North and east of Topeka Avenue.

SUBJECT TO THE FOLLOWING CONDITIONS:

1. The Conditional Use shall permit the torch cutting, crushing, shearing, baling, shredding, storage and shipping of motor vehicles, appliances and other industrial scrap materials.
2. The site shall be developed and operated in compliance with all of the conditions of UZC, Art III, Sec. III-D.6.e, including the use of approved fencing or wall materials, and the approved site plan.
3. Employee parking spaces shall be provided per the UZC on an area paved with asphalt or concrete.
4. Stored materials, containers or bales shall be stored on a surface approved by the Office of Central Inspection.
5. A revised site plan addressing the conditions of approval shall be approved by the Planning Director prior to the beginning of the operation.
6. No scrap vehicles or scrap metal/appliances waiting to be processed shall be visible from ground-level view from any public right-of-way or abutting properties.
7. Storage of all of scrap materials (vehicles, metals, appliances, etc., including bales of the just mentioned) waiting to be processed and the containers they are stored in shall organized and be installed in an orderly manner, including an exposed perimeter, as specified by Environmental Services to prevent rodent harborage and breeding.
8. The applicant shall maintain at all times an active program for the eradication and control of rodents.
9. Weeds shall be controlled within the subject property and adjacent to and along the outside perimeter of the screening fence.
10. Any locking devices on entrance gates shall meet Fire Department requirements. Access to and within the site shall be provided by fire lanes per the direction and approval of the Fire Department.
11. Access to the subject property shall be provided for on-going inspections of the site for groundwater and soil contaminants by Environmental Services and other applicable governmental agencies. If the inspections determine it to be necessary, the applicant shall be required to install monitoring wells and/or perform soil testing on the property to monitor the quality of groundwater and/or soil, and shall pay the cost of an annual groundwater and/or soil test for contaminants as designated by the Environmental Services.
12. Notification shall be given to Environmental Services of any on-site storage of fuels, oils, chemicals, or hazardous wastes or materials. A disposal plan for fuels, oils, chemicals, or hazardous wastes or materials shall be placed on file with Environmental Services. All manifests for the disposal of fuels, oils, chemicals, or hazardous wastes or materials must be kept on file at the site and available for review by the Environmental Services.
13. The applicant shall implement a drainage plan approved the City Engineer prior to the commencement of operations that minimizes non-point source contamination of surface and ground water.

14. The applicant shall obtain and maintain all applicable local, state, and federal permits necessary for the operation of the storage of scrap metal waiting to be processed and storage of the scrap metal bales.
15. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

SECTION 2. That upon the taking effect of this Resolution, the notation of such Conditional Use permit shall be shown on the "Official Zoning District Map" on file in the office of the Planning Director of the Wichita-Sedgwick County Metropolitan Area Planning Department.

SECTION 3. That this Resolution shall take effect and be in force from and after its adoption by the Governing Body.

ADOPTED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, this date, December 15, 2009.

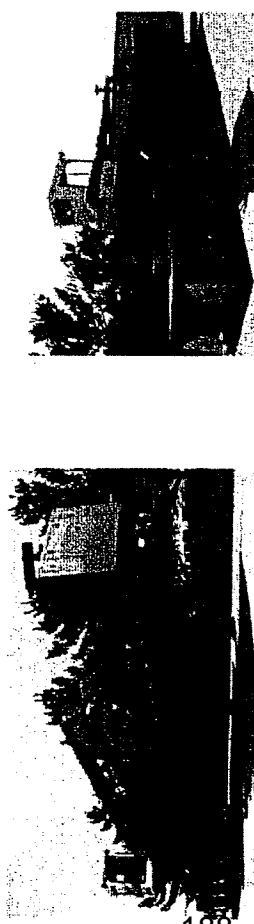
Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to form:

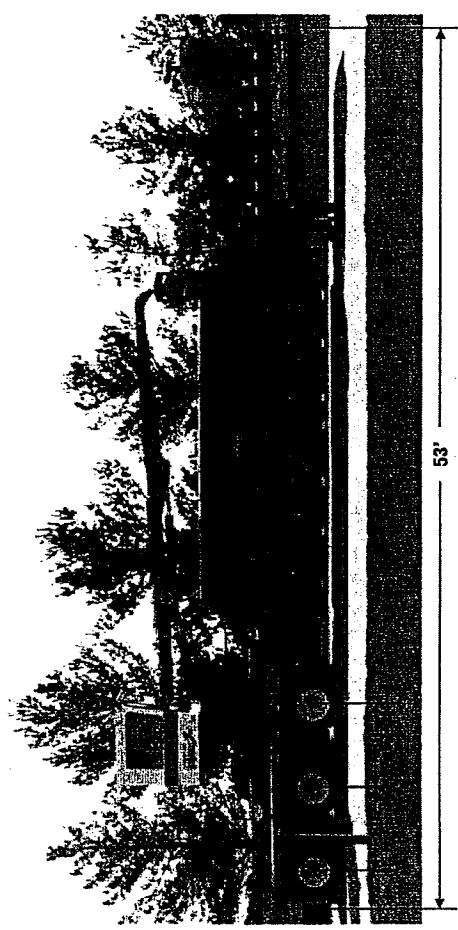
Gary E. Rebenstorf, City Attorney



FEATURES

- ▶ I Box Design
- ▶ 540° Crane Rotation
- ▶ Throttle Inside Cab
- ▶ Pressure Switch (Log or Bale) Inside Cab
- ▶ Fully Portable & Road Legal
- ▶ Four Corner Hydraulic Outriggers for Stability
- ▶ One Man Operation
- ▶ High Visibility Operator's Station
- ▶ Fully Auto Cycle (Ram in & Out-doors Open)

KEEPING IT SIMPLE, BUILDING IT STRONG



SPECIFICATIONS

ENGINE:

173 HP John Deere or Cummins Diesel Engine.
Front Mounted for Easier Maintenance Access.

HYDRAULICS SYSTEM:

Double Pump (Baler) 120 GPM at 2100 RPM
Filtration: Kidney Loop 5 Micron Filtration

Multiple Relief Protection at 2500 PSI.

Operating Pressure 2500 to 2800 PSI.

Lid Cylinders: 8" Bore x 28" Stroke--
4" Chrome Rods

Ram Cylinders: 1 - 12" Bore x 128" Stroke--
9" Chrome Rod

1 - 12" Bore x 88 1/2" Stroke--
9" Chrome Rod

REAR AXLE:

Tri-axle with 11:00 x 22.5 Tubeless Tires

CAPACITIES:

Fuel: 90 gal.

Hydraulic: 290 Gal.

CRANE:

Model 1010 Knuckle Boom Material Handler.

Large Modern Crane Cab.

• AC/Heater.

• Joy Stick Controls.

• Fully Adjustable Seat.

• 25' 8" Reach

• 4,000 Pounds Lifting Capacity at 20' Reach.

• Load Sensing Piston Pump

• 540 Direct Manually Controlled Hydraulics

ELECTRICAL:

Heavy Duty Dual 12 Volt Batteries

Solenoid Controlled Hydraulic Functions -
- 12 Volt Fuse Protected

All Solenoids and Control Boxes are Sealed
Water Tight

BALING CHAMBER:

Dimensions - 10'W x 19'L.

"T" Box Design with Stress Relieved Welds.

Lower Baling Chamber Allowing Better
Operator Visibility.

BALE SIZE:

40"W x 25"H x Variable Length.

Bale Density: 30 - 80lbs. Per Cu. Ft.

HEIGHT:

13' 6"

WEIGHT:

93,000 lbs.

PRODUCTION:

25 Car Bales Per Hour.

CERTIFIED
ISO 9001:2000



Al-Jon Inc.

14599 2nd Ave.

Ottumwa, IA 52501

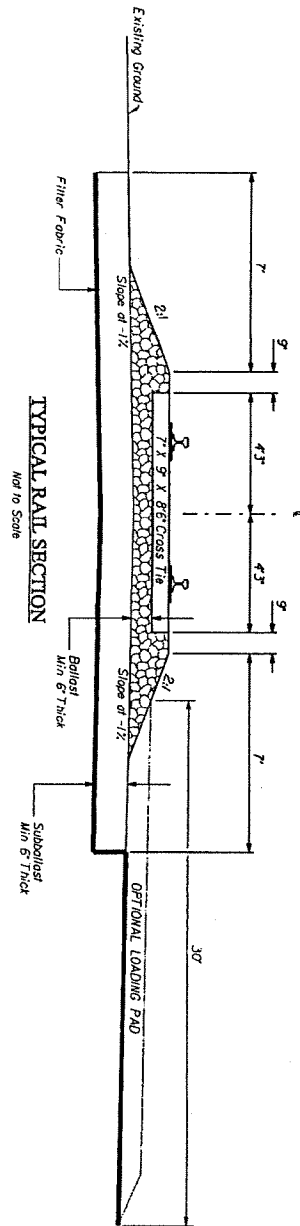
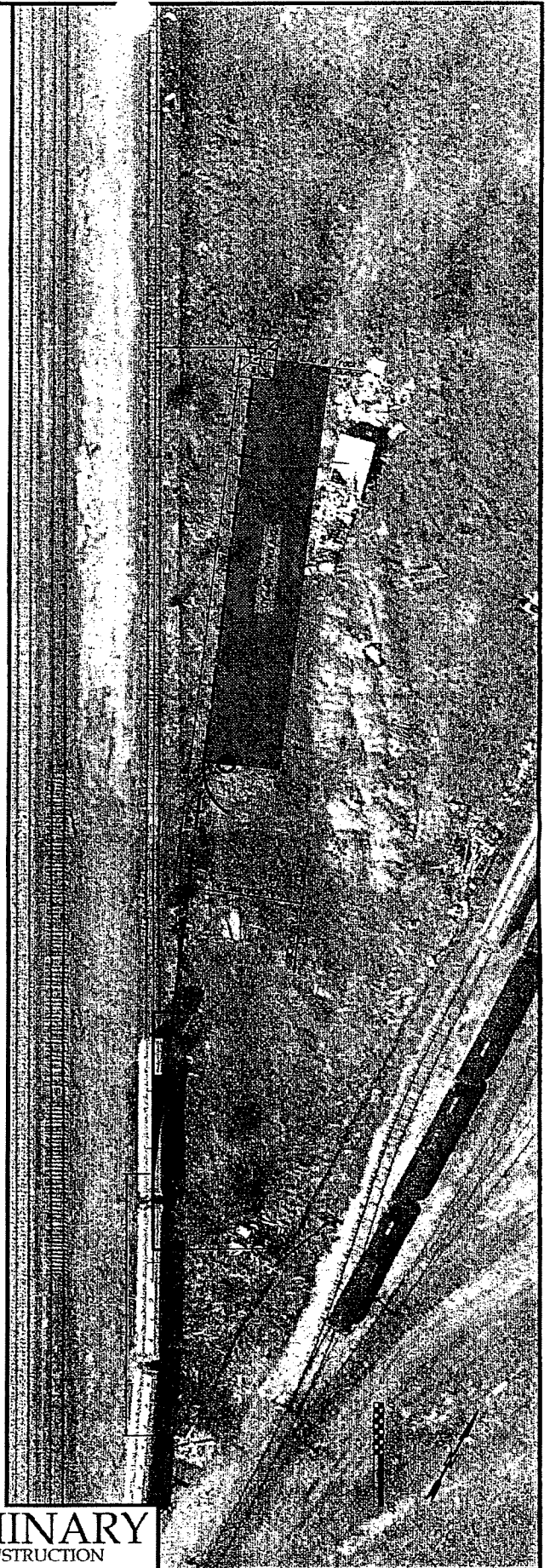
Ph. 841-882-4508

888-255-6629

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0405



PRELIMINARY
NOT FOR CONSTRUCTION

Project No. XXX-XX	Drawing No. R101	PRELIMINARY RAIL LAYOUT	Ameritrack WEST Client: CHARLIE STEVENS WICHITA, KANSAS	AMERITRACK WEST, INC. 13469 SW 15th Berwyn, KS 67017 O: 316-778-2215 F: 316-778-1204	No. Date By Description 1 10/1/01 JLS 2 10/1/01 JLS 3 10/1/01 JLS
	Title Drawing No.			No. Date By Description 1 10/1/01 JLS 2 10/1/01 JLS 3 10/1/01 JLS	



INTEROFFICE MEMORANDUM

TO: MAPC Members
FROM: Terri Dozal, Neighborhood Assistant, District VI
SUBJECT: CON2009-00032
City Conditional Use for Wrecking and Salvage yard in GI General Industrial (GI) zoning generally located south of 21st Street North and East of Topeka Street.
DATE: November 4, 2009

On Monday, November 2, 2009 the District VI Advisory Board (DAB) considered City Conditional Use for Wrecking and Salvage yard in GI General Industrial (GI) zoning generally located south of 21st Street North and East of Topeka Street.

The members were provided the MAPD staff report for review prior to the meeting. *Dale Miller*, Planner presented the case background, reviewed the staff recommendation, MAPC recommendation and answered questions of members and the public.

The Board asked the following questions/comments:

- Will this cross 21st street?
- Will there be any storage for tires?
- What type of solid screening?
- How does this fit in with the 21st renovation plan?

There were no members of the public to speak in favor or opposition of the request.

******Action:** The District VI Advisory Board members made a motion to recommend to City Council Approval (5-0) of the conditional use request based on staff recommendations and subject to conditions listed in the staff report.

Please review this information when CON2009-00032 is considered.

mtd

RECEIVED

RECEIVED

11/18/09

NOV 18 2009

Case# CON 2009-00032

ETROPOLITAN PLANNING

CITY CLERK OFFICE

By Webb Road Development, plan for 14.7 acres of auto wrecking yard at Topeka & 21st St and South

Request: We the signees below are definitely against this plan:

There is an automobile crushing and wrecking operation, and scrap metal operation that wants set up in the area 14.7 acres between 21st Street to the north and south approximately 3 blocks to approximately 17th St. and approximately 2 blocks east to west from close to Topeka to close to Mead. This is quite a movement toward the Hispanic community and downtown with an apparent downtown in development potential.

In the early 1900's, scrap metal firms were located right downtown. In the 30's they were still at Central and Washington, 600 block on Murdock, and at 2nd and McClean where the museum is now. Later the recycling yards were finally forced to move further north to 21st Street. Now we have someone trying to reverse the flow back toward the center of the city.

Do we need this auto wrecking yard? No, there are three auto wrecking yards north of this project. One at 2827 N. Emporia (Glickmans), a second at 302 E. 25th St., and a third at 2711 N. New York. The first two are out of the way of development and much larger than the projected new one. There are also some auto wrecking yards outside the city boundaries.

How would this project effect the city? Regardless of what they claim, Crushing and wrecking autos would pollute the property with oil, gasoline, paint and other contaminants. Using an oxy-acetylene torch to cut off springs, wheels, axles, etc. off of a car would contaminate the atmosphere and the neighborhood. The loud noise of the operation would effect the neighborhood. I speak from experience.

Since it is near to the Hispanic neighborhood, it would adversely effect any future development, as it would also hurt any development on Broadway particularly east on 21st and Topeka south from 21st.

The property taxes in the entire area, and surrounding areas will tend to be much lower, as would the value of all the nearby properties.

I would hope we could defeat this project.

	Signature	Location	Other Info
1.	<i>W. C. Bombardieri</i>	2039 N. BROADWAY	Hollerike-Porrim Tires
2.	<i>SAN H CHUNG</i> <i>Chy Chy</i>	2056 N. BROADWAY	CHINA MARKET OF KS.
3.	<i>James Beluch</i>	2108 N. Broadway	Gelinto Fashion
4.	<i>Joe Agb</i>	1816 N Broadway 320 E 17 th St	Jabara Carpet Out let Inc
5.	<i>Linda Weiss Enegran</i>	710 E 17 th St	LS Industries

RECEIVED

NOV 17 2009

RECEIVED

Case# CON 2009-00032

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CITY CLERK OFFICE

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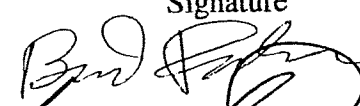
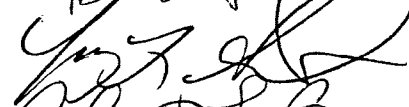
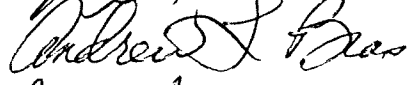
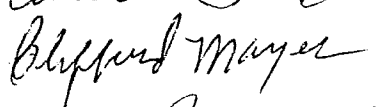

Do we need this auto wrecking yard? No, there are three auto wrecking yards north of this project. One at 2827 N. Emporia (Glickmans), a second at 302 E. 25th St., and a third at 2711 N. New York. The first two are out of the way of development and much larger than the projected new one. There are also some auto wrecking yards outside the city boundaries.

How would this project effect the city? Regardless of what they claim, Crushing and wrecking autos would pollute the property with oil, gasoline, paint and other contaminants. Using an oxy-acetylene torch to cut off springs, wheels, axles, etc. off of a car would contaminate the atmosphere and the neighborhood. The loud noise of the operation would effect the neighborhood. I speak from experience.

Since it is near to the Hispanic neighborhood, it would adversely effect any future development, as it would also hurt any development on Broadway particularly east on 21st and Topeka south from 21st.

The property taxes in the entire area, and surrounding areas will tend to be much lower, as would the value of all the nearby properties.

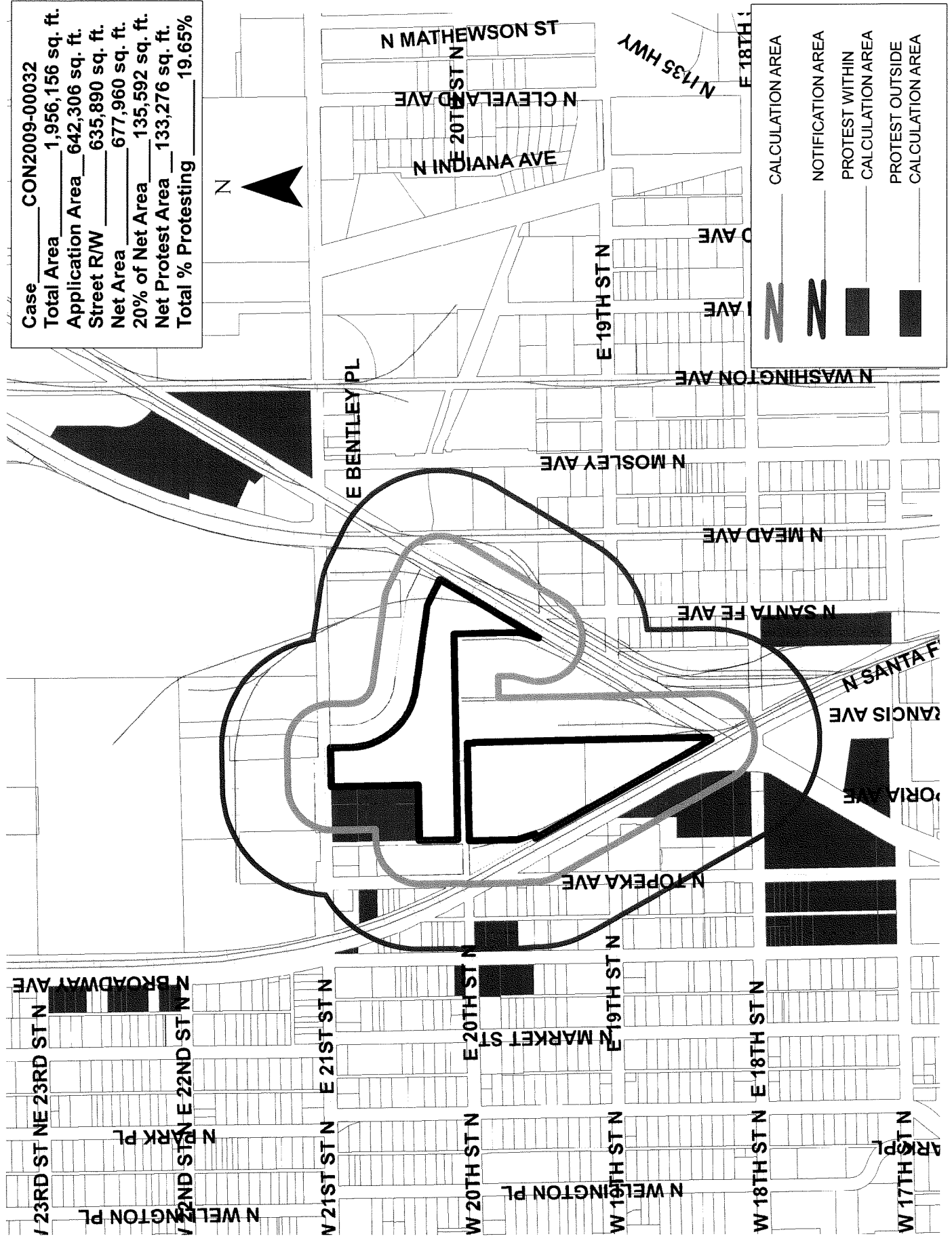
I would hope we could defeat this project.

	Signature	Location	Other Info
1.		2305 N Broadway 700 E 17 th St	
2.		414 E 18 th St.	
3.		1826 N Topeka	
4.		2145 N Topeka 2039 N Topeka, Excavating	
5.		2111 N Broadway	Auto Shop
6.	Sheldon Kamen	2107 N Broadway	rents property
7.	EL PE OROS	2113 N Broadway	(owned by Sheldon Kamen)

Case CON2009-00032
 Total Area 1,956,156 sq. ft.
 Application Area 642,306 sq. ft.
 Street R/W 635,890 sq. ft.
 Net Area 677,960 sq. ft.
 20% of Net Area 135,592 sq. ft.
 Net Protest Area 133,276 sq. ft.
 Total % Protesting 19.65%



	CALCULATION AREA
	NOTIFICATION AREA
	PROTEST WITHIN CALCULATION AREA
	PROTEST OUTSIDE CALCULATION AREA



EXCERPT OF THE NOVEMBER 4, 2009 MAPC HEARING

Case No.: CON2009-32 - Webb Road Development (Owner/Applicant), c/o Johnny Stevens
MKEC Engineering Co., c/o Gene Rath (Agent) Request City Conditional Use for Wrecking and
Salvage yard in GI General Industrial zoning on property described as:

Lot 1, Block 1, Wichita Stockyard Addition, an addition to Wichita, Sedgwick County, Kansas,

TOGETHER WITH,

A tract in the Northwest Quarter of Section 9, Township 27 South, Range 1 East of the 6th Principal Meridian, Sedgwick County, Kansas, described as: BEGINNING 546.7 feet east and 661.7 feet south of the Northwest Corner of Section 9; thence east along a line parallel to the north line of said Section 9, a distance of 446.3 feet; thence south along a line parallel to the west line of said Section 9, a distance of 30 feet; thence east along a line parallel to the north line of Section 9, a distance of 3 feet; thence south along a line parallel to the west line of said Section 9, a distance of 1,066.05 feet; thence along a line forming an angle of 26 degrees, 15 minutes to the left from the above course a distance of 5 feet, more or less, to the west line of the right of way of the Missouri Pacific Railway Company; thence in a southwesterly direction along the west line of said right of way to the point of intersection of said west line of said right of way and the east line of the right of way of the Atchison, Topeka and Santa Fe Railway Company a distance of 933.15 feet; thence east along a line parallel to the north line of said Section 9, a distance of 20.35 feet; thence in a northwesterly direction with an angle to the right of seventy-five degrees, 27 minutes a distance of 87.95 feet; thence north with a deflection angle to the right of fourteen degrees, fifty-nine minutes a distance of 220.8 feet to the PLACE OF BEGINNING. The above collectively containing 14.7 acres more or less, generally located south of 21st Street North and east of Topeka Street.

BACKGROUND: The applicant is requesting a Conditional Use to permit wrecking and salvage on the GI General Industrial ("GI") zoned 14.7-acre site located south of 21st Street, between Topeka and Mead Streets. The applicant proposes to reduce the salvaged material/metal by torch cutting and crushing, and then bale, store and ship the scrap material/metal. A mobile shear may be added later. Shipping off of the site will be done by truck and rail. The applicant does not propose to sell vehicle parts, scrap metal or appliance parts off of the site.

The Unified Zoning Code (UZC, Art II, Sec II-B.14.r) definition of a "wrecking/salvage yard" includes the proposed use: "...a lot, land, or structure used for the collecting, dismantling, storing, and/or salvaging of machinery, equipment, appliances, inoperable vehicles, vehicle parts, bulky waste, salvage materials, junk, or discarded materials; and/or for the sale of parts thereof. Typical uses include motor vehicle salvage yards and junkyards." The UZC, Art III, Sec III-D.6.e, requires a Conditional Use for a wrecking/salvage yard in the GI zoning district, with the following conditions:

- (1) Is not abutting an arterial street, expressway, or freeway;
- (2) In the opinion of the Planning Director, will not adversely affect the character of the neighborhood; and
- (3) Is enclosed by a fence or wall not less than eight feet in height and having cracks and openings not in excess of five percent of the area of such fence.

The site plan shows an 8-foot screening fence (steel) around the entire site. The site plan shows an office located off of the north portion of the site, along 21st Street North. The office has a 3 bay door garage attached to it. The site itself is proposed to be located 150 feet south of 21st Street, thus it will not be abutting an arterial street, expressway, or freeway. The applicant proposes to install a rail spur to allow the crushed vehicles/scrap metal to be shipped off the site by train. There will be drop-offs at this site from either the public or other businesses. Open top gondola trailers and open top tractor trailers will be on the site to hold scrap for shipping. Existing light will be used and security cameras will be put around the site. The site will be open Monday - Friday, 7:30 A.M. - 5:00 P.M. and have six to eight employees on the site.

Currently the southern, unplatted portion of the site is vacant. The platted, northern portion of the site is partially filled with wrecked, inoperable automobiles/motor vehicles, some trailers and miscellaneous junk stored on the dirt, gravel and weedy storage area. There is no solid screening around this northern portion of the site or the vacant southern portion of the site. Staff could not find a previous Conditional Use for a wrecking and salvage yard on the site, however aerials of the site (from 1997 to 2008) show both the northern and southern portions of the site to have been used as a wrecking and salvage yard.

The northern and southern portions of the site are separated by 20th Street North, a local, dirt and gravel public road, with 30-50 feet of right-of-way (ROW). 20th Street crosses railroad tracks, which run along the west side of the southern portion of the site, and continues west crossing Topeka to its intersection with Broadway Avenue. Broadway is a paved, curbed, four-lane minor arterial. Topeka is a paved, two-lane local street. 20th Street ends at the grain elevators abutting the eastern side of the southern portion of the site.

The area around the site is zoned GI. Development along 21st Street from Broadway Avenue to I-135, consists of: auto salvage yards, metal recycling yards, junk yards, wholesale used tires, office – warehouse, used car sales, auto repair, a day reporting center (CON2001-56, the most recent development in the area), old self storage, vacant land and empty buildings. Staff found no case history on the neighboring existing auto salvage yards and junk yards in the area; these facilities do not appear to be in compliance with the UZC. The 1997, 2000, 2003 and 2006 aerials show junk yards and auto salvage yards of varying sizes in the area. There are active railroad tracks throughout the area, including one that separates Broadway from this area. The Nomar International Market (PUD-31) is located on the west side of Broadway.

The site is located within the *21st Street North Corridor Revitalization Plan* within its “Central Sub-Area.” The Plan’s 20 (+)-year land use plan shows the site to be located in the General Industrial category. The General Industrial category is for heavy industrial uses that are rail dependent; the proposed use fits into this category.

CASE HISTORY: The northern portion of the site was recorded as Lot 1, Block 1, the Wichita Stockyard Addition, on December 26, 2001. The southern portion of the site is not platted.

ADJACENT ZONING AND LAND USE:

NORTH:	GI	Manufacturing, office-warehouse, wrecking and salvage yards/recycling
SOUTH:	GI	Railroad tracks, grain elevators
EAST:	GI	Railroad track spur, grain elevators, drainage canal, car sales, vacant land
WEST:	GI	Railroad tracks, grain elevators, vacant land, self storage warehouse, office-warehouse-distribution

PUBLIC SERVICES: The subject property has direct access to 21st and 20th Streets and a paved alley. 21st Street is a paved four-lane principle arterial, with 60 feet of ROW. 20th Street is a dirt and gravel local street with 30-50 feet of ROW. The 2030 Transportation Plan projects 21st Street to become a five-lane arterial, with new railroad and street grade separation. The Plan shows no change to 20th Street. Traffic counts along the Broadway - 21st intersection show 13,621 – 16,778 trips per day. All utilities are available to the subject site.

CONFORMANCE TO PLANS/POLICIES: The *2030 Wichita Functional Land Use Guide* of the Comprehensive Plan classifies the general location as appropriate for “Processing Industry” development; wrecking/salvage yards are an appropriate use for this classification. There are numerous junk yards and auto salvage yards in this area that are not in compliance with the current UZC, with some being in the area, as shown on aerials, since at least 1997.

The Industrial Locational Guidelines of the Comprehensive Plan recommend that industrial uses should be located in close proximity to support services and provide good access to major arterials, truck routes, belt highways, utility trunk lines, along railroads, near airports and as extensions of existing industrial uses; the site has access to railroad and an arterial in an industrial area with similar uses. Industrial uses should be located away from existing or planned residential areas, and sited so as not to generate travel through less intensive land uses. The proposed site is located away from existing or planned residential areas and should not generate traffic through residential areas.

The site is located within the *21st Street North Corridor Revitalization Plan*. The Plan's 20(+)-year land use plan shows the site to be located in the General Industrial category. The General Industrial category is for heavy industrial uses that are rail dependent; the proposed use fits into this category.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

1. The Conditional Use shall permit the torch cutting, crushing, shearing, baling, shredding, storage and shipping of motor vehicles, appliances and other industrial scrap materials.
2. The site will be open Monday - Friday, 7:30 A.M. – 5:00 P.M.
3. The site shall be developed and operated in compliance with all of the conditions of UZC, Art III, Sec. III-D.6.e, including the use of approved fencing or wall materials, and the approved site plan.
4. Employee parking spaces shall be provided per the UZC on an area paved with asphalt or concrete.
5. Stored materials, containers or bales shall be stored on a surface approved by the Office of Central Inspection.
6. A revised site plan addressing the conditions of approval shall be approved by the Planning Director prior to the beginning of the operation.
7. No scrap vehicles or scrap metal/appliances waiting to be processed shall be visible from ground-level view from any public right-of-way or abutting properties.
8. Storage of all of scrap materials (vehicles, metals, appliances, etc., including bales of the just mentioned) waiting to be processed and the containers they are stored in shall organized and be installed in an orderly manner, including an exposed perimeter, as specified by Environmental Services to prevent rodent harborage and breeding.
9. The applicant shall maintain at all times an active program for the eradication and control of rodents.
10. Weeds shall be controlled within the subject property and adjacent to and along the outside perimeter of the screening fence.
11. Any locking devices on entrance gates shall meet Fire Department requirements. Access to and within the site shall be provided by fire lanes per the direction and approval of the Fire Department.
12. Access to the subject property shall be provided for on-going inspections of the site for groundwater and soil contaminants by Environmental Services and other applicable governmental agencies. If the inspections determine it to be necessary, the applicant shall be required to install monitoring wells and/or perform soil testing on the property to monitor the quality of groundwater and/or soil, and shall pay the

cost of an annual groundwater and/or soil test for contaminants as designated by the Environmental Services.

13. Notification shall be given to Environmental Services of any on-site storage of fuels, oils, chemicals, or hazardous wastes or materials. A disposal plan for fuels, oils, chemicals, or hazardous wastes or materials shall be placed on file with Environmental Services. All manifests for the disposal of fuels, oils, chemicals, or hazardous wastes or materials must be kept on file at the site and available for review by the Environmental Services.
14. The applicant shall implement a drainage plan approved the City Engineer prior to the commencement of operations that minimizes non-point source contamination of surface and ground water.
15. The applicant shall obtain and maintain all applicable local, state, and federal permits necessary for the operation of the storage of scrap metal waiting to be processed and storage of the scrap metal bales.
16. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

The staff's recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The area around the site is zoned GI. Development along 21st Street from Broadway Avenue to I-135, consist of auto salvage yards, metal recycling yards, junk yards, whole used tires, office – warehouse, used car sales, auto repair, a day reporting center (CON2001-56), old self storage, vacant land and empty buildings. There are also grain elevators in the area that are active. The 1997, 2000, 2003 and 2006 aerials show junk yards and auto salvage yards of varying sizes in the area. There are active railroad tracks throughout the area, including one that separates Broadway Avenue from this area.
2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned GI. A wrecking and salvage yard may be permitted with a Conditional Use in the GI zoning district, with the minimum conditions as listed in the UZC, Art III, Sec III-D.6.e. The site, as proposed, appears to conform to these minimum conditions: it does not abut an arterial street, expressway, or freeway (it is setback 150 feet from 21st Street North, an arterial street); the area has other wrecking and salvage yards; and it will have a minimum of an 8-foot tall solid, metal fence around it.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Detrimental effects on nearby property should be minimized by the recommended conditions of approval, which include screening. There are other wrecking or salvage yards in the area, so the proposed use is not introducing a new use to the area, which includes metal recycling yards, junk yards, wholesale used tires, office – warehouse, used car sales, auto repair, a day reporting center (CON2001-56, the most recent development in the area), old self storage, vacant land and empty buildings.
4. Conformance of the requested change to adopted or recognized Plans/Policies: The *2030 Wichita Functional Land Use Guide* of the Comprehensive Plan classifies the general location as appropriate for “Processing Industry” development; a wrecking/salvage yard is an appropriate use for this classification. There are numerous junk yards and auto salvage yards in this area that are not in compliance with the current UZC, with some being in the area since at least 1997. The Industrial Locational Guidelines of the Comprehensive Plan recommend that industrial uses should be located in close proximity to support services and provided good access to major arterials, truck routes, belt highways, utility trunk lines, along

railroads, near airports and as extensions of existing industrial uses; the site has access to railroad and an arterial in an industrial area with similar uses. Industrial uses should be located away from existing or planned residential areas, and sited so as not to generate travel through less intensive land uses. The proposed site is located away from existing or planned residential areas and should not generate traffic through residential areas. The *21st Street North Corridor Revitalization Plan* 20 Year Land Use Plan map depicts this location as appropriate for General Industrial uses that include heavy industry that is rail dependent.

5. Impact of the proposed development on community facilities: All utilities are available to the site. The use of this property should have limited impact on community facilities, with the exception of the impact on 21st and 20th Streets North. 21st is a paved, curbed major arterial and 20th is a dirt and gravel local street with 30-50 of ROW. The site is also located within the *21st Street North Corridor Revitalization Plan's* "Central Sub-Area." This area has extensive existing ground water contamination, which requires monitoring.

BILL LONGNECKER Planning Staff, remarked that rather than make a full presentation, he would be glad to answer any specific questions from Commissioner Hillman. He also noted that the applicant had requested that condition #2 be revised to allow the wrecking and salvage yard to operate on Saturday.

HILLMAN referred to the aerial of the site, specifically the curved portion on the north side of the site and the creek that ran through it.

LONGNECKER stated that the area he was referring to was a platted reserve, part of the Wichita Stockyards Addition and that the drainage was running in it and out of it, but that the reserve was not in the application area.

HILLMAN asked who owns the creek.

LONGNECKER said he would have to look at the plat to determine who owned the reserve, where this portion of the creek was located. Beyond the reserve he was not sure who had ownership of the creek.

HILLMAN asked if the City owned the creek.

LONGNECKER commented that he would have to review a quarter section map to see what the status of the creek was in regards to if it was located in reserves, easements, or had been condemned as right-of-way.

HILLMAN referred to several slides he had taken of the creek within the reserve. He said there is a reasonable slope along the creek. He said when this operation takes place, he looks for the developers to do a good job of maintain the slope and not adding to run off from the site into the creek. He said this was one of the worst contaminated areas within the City.

MARNELL asked about condition #2, and why it was included, since the site was located in the heaviest industrial zoning in the City.

LONGNECKER said that as part of the dialog with the applicant about the use, staff asks the days and hours of operation, which the applicant gave and was included in the conditions.

MARNELL said the hours were included as a requirement and he was curious as to why staff thought that was necessary.

LONGNECKER said hours of operation have been included on other wrecking and salvage yard applications as a result of talking with other applicants about their Conditional Uses.

B. JOHNSON asked how staff felt about the request for Saturday operations.

LONGNECKER said staff had no problem with Saturdays, noting that the proposed use was replacing a nonconforming wrecking and salvage yard and that the impact on the area would be similar as the previous use. He also commented about other scrap yards and wrecking and salvage yards along 21st between Broadway and I-35.

DOWNING referred to the map of the site and asked where the rail spur was going to be installed.

LONGNECKER said he would let the applicant and agent respond to that.

FOSTER referred to the site plan and asked if staff would have any issues with location of the screening fence

LONGNECKER responded no.

GENE RATH, MKEC ENGINEERING, AGENT FOR THE APPLICANT referred to the aerial and said the north portion of the site is platted as the Wichita Stockyards Addition, and was recorded in 2001. He was not sure of the ownership of the reserve, as he could not say with 100 percent certainty, but he did not believe it was owned by the City. He said the reserve language probably allows for drainage, maintenance and those types of things. He said the rail spur will be located at the south end of the site with a short spur right into the site. He said there will be a mechanism to crush cars and other metals so they can be loaded directly onto rail cars on the site. He said when the application was submitted; staff asked a number of questions and days and hours of operation was one of them. He said the applicant provided staff the intended days and hours of operation which were Monday through Friday; however, they would like to operate on Saturday. He said he does not believe they intend to operate 24-hours a day or into the night, even though the site is located in an industrial area. He said in reference to the screening, he believes the general policy and guideline is that these types of operations not be located within 150 feet of a major arterial. He said they pulled the required screening a little farther south to say 175 or 200 feet.

J. JOHNSON asked if the agent had a comment about the runoff into the creek.

RATH said he did not have a comment on the runoff into the creek and added that they are not aware of any particular problems. He said one of the requirements of the Conditional Use was to have a drainage plan. He said there was a drainage plan for the area currently on file with the City. He commented that the south side will be screened off from the view to the north.

HILLMAN mentioned employee parking being paved with asphalt or concrete. He also mentioned that it appears that storage of materials will be on the ground and asked if that was correct.

RATH said they did not intend to provide asphalt to store the vehicles. He said they will be stored on the ground and not on pavement.

LONGNECKER explained that City code regards a gravel surface for a wrecking/salvage yard's storage area.

HILLMAN said this brown field area has trouble even growing weeds. He said he would still like to have the ground prepared and bermed on the north side. He said he was more than willing to work with the property owner to talk about reparations and fixing up that area from the current pollution.

MILLER STEVENS asked if the agent/applicant were aware of any current violations and contaminations in any of the area.

RATHE said they are not aware of violations or current contamination related to these properties. He said the entire area is subject to contaminated ground water. He said the owner may be able to speak to that more than he can. He said the entire area is not a pristine, clean ground water area; however, he is not aware of any problems attributed to this property or code violations attributed to this property.

JOHNNY STEVENS, APPLICANT AND PROPERTY OWNER said this area has contaminated ground water at about 15 feet, but it has mostly been contaminated from things further north where the water has migrated down through the area. He said there has been extensive testing in this area by the Kansas Department of Health and Environment (KDHE) and that there was no surface contamination on the ground. He said there were no “hot spots” where KDHE could pinpoint a source from his property. He said he wouldn’t want to put a berm where Mr. Hillman had mentioned because it would be extremely expensive and they might as well not do the deal. He said they were required to put in a screening fence anyway.

HILLMAN said the intent of the berm was to keep run off from the wrecked vehicles from running into the creek, and asked if their drainage plan’s design would address that and asked when it was approved.

STEVENS said they haven’t even done a drainage study yet so they don’t know if all of this area drains into the ditch. He said that the ditch was part of his property until they platted the area and then the City requested a portion be dedicated for a reserve which the City has maintained since it was platted. He said he couldn’t answer Mr. Hillman’s question and didn’t know how big a berm he was talking about, but he said if that is the way the water flows naturally, it will go into the creek somehow.

MOTION: To approve subject to staff recommendation, and change hours of operation to include Saturdays.

J. JOHNSON moved, **HENTZEN** seconded the motion.

MARNELL said he would like to make a substitute motion and said this goes in line with what he sees as Staff doing unnecessary regulation of business and government in general doing unnecessary regulation of business. He commented “you can laugh as much as you want Dale.” He said he does not see it as staff’s place to tell a business what hours to operate. He said if the hours had a purpose, such as if the site was adjacent to a residential area, he could understand the condition. But he said to put it in that (industrial) area and then say but you can only operate on these days from these times; he said he feels it is up to the applicant to use his property any way he wants.

SUBSTITUTE MOTION: To approve subject to staff recommendation, with the elimination of Item #2.

MARNELL moved, **MITCHELL** seconded the motion.

DOWNING said he had general questions. He voiced concern about the approved 21st Plan that the City was spending a good deal of money on and the Nomar open air market being 4-5 blocks west of this industrial area. He asked if the Commission was compounding the problem by adding an additional industrial item at this location. He said salvage yards and improvement of property and streets doesn’t go very well together.

DIRECTOR SCHLEGEL commented that everyone involved in developing the 21st Street Revitalization Plan, including Johnny Stevens, would like to see some other uses of these properties in this part of 21st Street between Broadway and I-35; however, he said the land use is what it is and has been long established in the area. He said he does not think this application improves the situation, but it also doesn’t make it any worse than it already is.

He said transitioning into a higher, better use of this property is not going to happen any time soon given the use of the property today. He said that is why staff was able to recommend approval.

HILLMAN asked about guidelines on how high materials can be stacked.

LONGNECKER said condition #7 addresses the height issue.

HILLMAN clarified then materials could be stacked no higher than the fence.

LONGNECKER said yes, and added that the 21st Street Corridor Revitalization Plan was one of the documents consulted when the report was written and it showed this area as general industrial for the next 20-plus years.

HILLMAN said he appreciated the information and mentioned that he has been talking with the Environmental Services Department and the people who actually do measurements in this area and that they expressed concerns. He said now that he understands that the City may have taken over this area for maintenance, he will be getting with them to see that this gets taken care of. He added that he would also like to visit with Mr. Johnny Stephens later.

LONGNECKER said the applicant and agent have been visiting with Environmental Services also.

MOTION: The Substitute motion carried (8-3).

DOWNING, FOSTER, and JOHNSON – No.

MILLER commented that as he had indicated the last time Mr. Marnell had specifically called him out on a staff report, that it was important for him to clarify the position regarding the hours of operation. He said staff does not care what the hours of operation are for this use, but that the applicant had volunteered them and staff had put them in the report. He said the Planning Commission had asked staff what were the hours and days of operation were for previous cases. He said staff provided them and the Commission can take them out; it doesn't make any difference to staff in regards to this case. He said he just wanted to clarify that staff was trying to be complete with the proposal and the Commission can do what they think is appropriate.

B. JOHNSON said that was the reason he did not vote to approve the application since the agent even made the comment from the podium that was what they requested.

FOSTER said he was concerned about the revitalization area to the west which is designed to be a pedestrian area and used actively during the weekends. He said the potential for conflict does concern him.

MARNELL said his comments in general had to do with over regulation and regulating where it is not necessary. He said the applicant had said that this is what they were generally planning, but not agreeing to restricted operation hours and days. In his opinion he felt that a restriction of days and hours of operation were unnecessary. He said his comment about Dale had to do with his "there he goes again attitude" and he was pretty good at reading people.

CHAIRMAN VAN FLEET commented in his personal view it was unfortunate to be ending the discussion in such a manner on a day when he believes staff has done really outstanding work, particularly on the prior item working their way through a confusing proposal that involved eight separate exceptions to the rules and presenting a credible plan which accommodated in some fashion the proposal before the Commission. He said he believes staff customarily does outstanding work and he was sure Mr. Marnell's comments were not personalized in any fashion.

MARNELL said absolutely not and that he agreed with the Chairman.

B. JOHNSON said he felt like if the Commission had approved what the applicant requested on CON2009-20, they would have opened up a can of worms for that homeowner and that there was no way the County would have ever approved that application.

City of Wichita
City Council Meeting
December 15, 2009

To: Mayor and City Council Members

Subject: DER2009-11 City of Wichita Boundary Resolution

Initiated By: Metropolitan Area Planning Department

Agenda: Planning (Consent)

Recommendation: Approve the Boundary Resolution.

Background: The City of Wichita is required by Kansas State law to annually prepare a description of the corporate boundaries. The law requires that the description shall define the boundaries after incorporating all changes made through annexation or exclusions of territory since December 16, 2008.

During the calendar year 2009, the City of Wichita approved a total of nine (9) annexations, all of which were requests. There were no unilateral annexations. The annexations added a total of 213.36 acres (0.333 square miles) to the City, resulting in an incorporated area of 162.981 square miles, as of December 31, 2009.

Analysis: City Engineering staff has prepared a legal description of all territory annexed into the City of Wichita since December 16, 2008.

Financial Consideration: None.

Goal Impact: Annexation assists the City of Wichita with accomplishing the goal to Ensure Efficient Infrastructure by facilitating optimized public facilities and assets.

Legal Consideration: K.S.A. 12-517 requires that for any year in which any territory has been added or excluded from any city, the governing body of such city shall declare, by resolution, the entire boundary of the city. The Law Department has reviewed and approved the Boundary Resolution as to form.

Recommendations/Actions: Approve the Boundary Resolution and authorize the necessary signatures.

Attachment: Boundary Resolution

A RESOLUTION DECLARING, ESTABLISHING AND DEFINING THE CITY LIMITS AND BOUNDARIES OF THE CITY OF WICHITA, KANSAS, AFTER ALL ANNEXATIONS OF TERRITORY AND EXCLUSIONS OF TERRITORY SINCE DECEMBER 16, 2008.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1: That hereafter and until altered or changed in accordance with the law, the City Limits are, and the entire boundaries of the City of Wichita, Kansas are hereby defined, established and declared to be as follows:

Beginning at the intersection of the north right-of-way line of 13th Street North and the east right-of-way line of 127th Street East; thence east along said north right-of-way line to the west line of the Southeast Quarter of Section 11, Township 27 South, Range 2 East of the 6th P.M.; thence north along said west line to the south right-of-way line originally designated for the St. Louis, Wichita, and Western Railway Company; thence east along said south right-of-way line to west line of the east half of said Southeast Quarter; thence south along said west line to the north right-of-way line of 13th Street North; thence east along said north right-of-way line to the east line of the west half of the Southeast Quarter of Section 12, Township 27 South, Range 2 East of the 6th P.M.; thence north along said east line to the south line of the originally designated right-of-way for the St. Louis, Wichita, and Western Railway Company; thence west along said south right-of-way line to a point located 487 feet east of the west line of Section 12, Township 27 South, Range 2 East of the 6th P.M.; thence south along a line parallel to said west line to a point located 568.23 feet south the north line of said Section; thence west along a line parallel to said north line to the east right-of-way line of 143rd Street East; thence north along said east right-of-way line to the north line of the South Half of Section 1, Township 27 South, Range 2 East of the 6th P.M.; thence west along said north line and the north line of the South Half of Section 2, Township 27 South, Range 2 East of the 6th P.M. to the east right-of-way line of 127th Street East; thence north along said east right-of-way line to the south right-of-way line of 29th Street North; thence west along said south right-of-way line to the west right-of-way line of 127th Street East; thence north along said west right-of-way line to the north right-of-way line of 29th Street North; thence west along said north right-of-way line to the east right-of-way line of Greenwich Road; thence north along said east right-of-way line to a point located 350 feet north of the south line of Section 34, Township 26 South, Range 2 East of the 6th P.M.; thence west parallel to the south line of said Section 34 and the south line of Section 33, Township 26 South, Range 2 East of the 6th P.M. to a point on the west right-of-way line of Greenwich Road located 350 feet north of the south line of said Section 33; thence north along said west right-of-way line to the north line of the south half of the Southeast Quarter of said Section 33; thence west along said north line of the south half to the east line of the West Half of said Section 33; thence north along said east line and the east line of the West Half of Section 28, Township 26 South, Range 2 East of the 6th P.M. to the south line of the Northeast Quarter of said Section 28; thence east along said south line, a distance of 283.35 feet; thence bearing N 06°02'48" E to the south right-of-way line of 45th Street North; thence west along said south right-of-way line to the east line of the West Half of Section 29, Township 26 South, Range 2 East of the 6th P.M.; thence north along the east line of said West Half and the east line of the West Half of Section 20, Township 26 South, Range 2 East of the 6th P.M. to the south right-of-way line of the Union Pacific Railroad; thence southwesterly along said south right-of-way line to the north right-of-way line of 45th Street North; thence west along said north line to the north right-of-way line of the Union Pacific Railroad; thence northeasterly along said north line to the east line of the Southwest Quarter of Section 20, Township 26 South, Range 2 East of the 6th P.M.; thence north along said east line to the north line of said Southwest Quarter; thence west along said north line to the east right-of-way line of Rock Road; thence south along said east line to the north right-of-way line of 45th Street North; thence west along said north line to the west right-of-way line of Rock Road; thence south along said west line to the northerly right-of-way line of the Missouri-Pacific Railroad; thence southwesterly along said northerly right-of-way line to a point one thousand four hundred sixty-five and one hundredth (1465.01) feet northeast of its intersection with the west line of the east half of Section 30, Township 26 South Range 2 East of the 6th P.M.; thence north with a deflection to the right of one hundred seventeen degrees, thirty-one minutes, forty-one seconds (117°31'41"), to the south right-of-way line of 45th Street North; thence west along said south line to the west line of the east half of said Section 30; thence south along said west line to the northerly right-of-way line of the Missouri-Pacific Railroad; thence southwesterly along said northerly right-of-way line to the east right-of-way line of Woodlawn Boulevard; thence south along said east line to the south right-of-way line of 37th Street North; thence west along said

south line to the west right-of-way line of Oliver; thence north along said west right-of-way line of Oliver to the south right-of-way line of 53rd Street North; thence west along said south line to the south right-of-way line of K-254 Highway; thence southwesterly along said south line to the east right-of-way line of the Union Pacific Railroad; thence southwesterly along said east line to the west line of the east half of the Southwest Quarter of Section 23, Township 26 South, Range 1 East of the 6th P.M.; thence south along said west line to a point 275 feet north of the south line of said Southwest Quarter; thence east parallel with said south line to a point 225 feet east of the west line of the east half of said Southwest Quarter; thence south parallel to said west line to the north right-of-way line of 45th Street North; thence west along said north right-of-way line to the east right-of-way line of Hillside Avenue; thence north along said east right-of-way line to the intersection with the north line of Normandy Park Addition; thence easterly along said north line to the Northeast corner of said Addition; thence southerly along the east line of said Addition, 206.00 feet; thence easterly parallel with the south line of the Northwest Quarter of said Southwest Quarter, 520.87 feet, more or less, to a point on the northwesterly right-of-way line of Kansas Highway 254, (Condemnation Case No. B19603); thence northeasterly along said right-of-way, being a curve to the left, having a radius of 2745.51 feet, an arc length of 222.70 feet to a point on the east line of the west half of said Southwest Quarter; thence northerly along said east line and the east line of the west half of the Northwest Quarter of Section 23, Township 26 South, Range 1 East to a point 195.00 feet south of the northeast corner of the west half of said Northwest Quarter; thence S 90°00'00" W, parallel with the North line of said Northwest Quarter, a distance of 230.00 feet; thence north to a point on the south right-of-way line of 53rd Street North located 1090.82 feet east of the west line of said Section; thence west 36.82 feet along said south right-of-way line; thence south parallel with the west line of said Section to a point 330.63 feet south of the north line of said Section; thence west parallel with the north line of said section a distance of 454 feet; thence south parallel with the west line of said section a distance of 100 feet; thence west to a point on the east right-of-way line of Hillside Avenue, said point being located 430.63 feet south of the north line of said Section; thence north along said east right-of-way line to the south right-of-way line of 53rd Street North; thence west along said south right-of-way line to the east line of the Northwest Quarter of Section 22, Township 26 South, Range 1 East of the 6th P.M.; thence south along said east line and the east line of the Southwest Quarter of said Section 22 to the northeast corner of the southeast quarter of said Southwest Quarter; thence west along the north line of said southeast quarter of the Southwest Quarter to the west line of the east half of said Southeast Quarter; thence south along said west line to a point 648.16 feet north of the south line of said Southeast Quarter; thence east to a point 647.7 feet north and 336 feet west of the southeast corner of said Southeast Quarter; thence south to the north right-of-way line of 45th Street North; thence west along said north right-of-way line to the east right-of-way line of Hydraulic Avenue, thence south along said east right-of-way line to the northwesterly right-of-way line of Highway K-254; thence northeasterly along said northwesterly line to the south right-of-way line of 45th Street North; thence east along said south line to the west right-of-way line of Hillside Avenue; thence south along said west right-of-way line to the southerly right-of-way line of Highway K-254 right-of-way; thence westerly along said southerly right-of-way line to the west right-of-way line of Hydraulic Avenue; thence south along said west right-of-way line to the southerly right-of-way line of the Chisholm Creek Diversion; thence southwesterly along said right-of-way line to a point 100 feet west of the east line of the Southwest Quarter Section 28, Township 26 South, Range 1 East of the 6th P.M., said point being the west right-of-way line of St. Louis and San Francisco Railroad; thence north along said west line to the north right-of-way line of the Chisholm Creek Diversion; thence westerly along said north line to the east right-of-way line of Lawrence Road; thence north along said east right-of-way line to the south right-of-way line of Interstate Highway 235; thence northeasterly and easterly along said south line to a point 860.7 feet west of the east line of said Southwest Quarter; thence north to the north line of said Southwest Quarter; thence west to the east line of the southwest quarter of the Northwest Quarter of Section 28, Township 26 South, Range 1 East of the 6th P.M.; thence north along said east line to the north line of said southwest quarter of the Northwest Quarter; thence west along said north line of said southwest quarter of the Northwest Quarter to a point 622.8 feet east of the west line of said Northwest Quarter; thence north parallel to the west line of said Northwest Quarter to the south right-of-way line of 45th Street North; thence west along said south line to the west line of said Northwest Quarter; thence south along said west line to a point 1620.84 feet north of the south line of said Northwest Quarter; thence west parallel to the south line of the Northeast Quarter of Section 29, Township 26 South, Range 1 East of the 6th P.M. to the east line of the Wichita-Valley Center Flood Control (Condemnation Case A-41035); thence northerly and westerly along said east line to the westerly right-of-way line of the Atchison, Topeka and Santa Fe Railroad; thence northwesterly along said westerly line to the south right-of-way line of 61st Street North; thence west along said south right-of-way

line to the east right-of-way line of Seneca Street; thence north along said east right-of-way line to the north right-of-way line of 61st Street North; thence west along said north right-of-way line to the east line of the west half of vacated Fairfield Street; thence southwesterly along said east line to the north line of the Northeast Quarter of Section 18, Township 26 South, Range 1 East of the 6th P.M.; thence west along said north line to a point 30 feet north of the northeast corner of Lot 110, Vanview Addition; thence south along a line parallel to the east line of the northwest quarter of said Northwest Quarter to the south right-of-way line of 61st Street North and the northeast corner of said Lot 110; thence west along said south right-of-way line to the east bank of the Little Arkansas River; thence north along the east bank to the north line of the Southeast Quarter of Section 7, Township 26 South, Range 1 East of the 6th P.M.; thence west along said north line to the east line of the Southwest Quarter of Section 7, Township 27 South, Range 1 East; thence north along said east line and the east line of the Northwest Quarter of said Section 7 to the north line of Reserve A, Rio Vista Estates Third Addition; thence westerly along said north line and the northerly line of Reserve A, Rio Vista Estates Second Addition to the east right-of-way line of Meridian Avenue; thence south along said east right-of-way line to a point on the most northerly northwest corner of Lot 1, Block 2 of Rio Vista Estates Second Addition and on the east right-of-way line of Meridian Avenue, said point being located 641.36 feet north of the south line of said Southwest Quarter.; thence west parallel to the south line of said section and Section 12, Township 26 South, Range 1 West of the 6th P.M. to a point on the west right-of-way line of Meridian Avenue, said point being located 641.36 feet north of the south line of said Section; thence north along said west right-of-way line to the centerline of the Little Arkansas River; thence northwesterly along said centerline to a point 1650.14 feet north of the south line of the Southeast Quarter of Section 12, Township 26 South, Range 1 West of the 6th P. M.; thence west parallel to the south line of said Southeast Quarter to a point 1056.05 feet, more or less, west of the east line of said Southeast Quarter; thence south along a line parallel to said east line to the north right-of-way line of 61st Street North; thence west along said north right-of-way line to a point 208.71 feet east of the west line of said Southeast Quarter; thence south to a point 208.71 feet east of the west line of the Northeast Quarter of Section 13, Township 26 South, Range 1 West of the 6th P.M. on the north line of said section; thence west along said north line to the west line of said Northeast Quarter; thence south along said west line to the north right-of-way line of 53rd Street North; thence east along said north right-of-way line to the west right-of-way line of Meridian Avenue; thence south along said west right-of-way line to the south right-of-way line of 53rd Street North; thence west along said south right-of-way line to a point 856.8 feet west of the east line of Section 24, Township 26 South, Range 1 West of the 6th P.M.; thence south to a point 649 feet, more or less, south of the north line of said Section 24, said point located 856.8 feet west of the east line of said Section; thence east parallel to the north line of said Section to the west right-of-way line of Meridian Avenue; thence south along said west right-of-way line to a point 1646 feet north of the Southeast corner of the Northeast Quarter of said Section 24; thence west along a line parallel to the north line and 147.5 feet west of the east line of said section; thence south 140 feet along a line parallel to the east line of said section; thence east along a line parallel to the north line of said section to the west right-of-way line of Meridian Avenue; thence south along said west right-of-way line to the north line of the south half of the Northeast Quarter, Section 24, Township 26 South, Range 1 West; thence west along said north line to a point on the east line of Moorings 10th Addition to Wichita, Sedgwick County, Kansas, said point being the southeast corner of Lot 2, Block 2 in said Moorings 10th Addition; thence N00°53'19"W a distance of 85.05 feet to a point on a non-tangent curve to the right; thence along said curve a distance of 143.82 feet, said curve having a central angle of 6°31'35", a radius of 1262.63 feet, and a long chord distance of 143.74 feet bearing N16°05'42"W; thence S66°16'15"W a distance of 200.34 feet to a point on a non-tangent curve to the right; thence along said curve a distance of 12.54 feet, said curve having a central angle of 1°08'11", a radius of 632.00 feet, and a long chord distance of 12.54 feet bearing S34°43'47"E; thence S55°50'18"W a distance of 64.00 feet; thence S66°16'15"W a distance of 227.79 feet to a point on a non-tangent curve to the left; thence along said curve a distance of 210.44 feet, said curve having a central angle of 11°12'58", a radius of 1029.00 feet, and a long chord distance of 201.11 feet bearing N89°32'08"W to a point on a reverse curve to the right; thence along said curve a distance of 211.64 feet, said curve having a central angle of 44°44'45", a radius of 271.00 feet, and a long chord distance of 206.30 feet to a point on a reverse curve to the left; thence along said curve 546.91 feet, said curve having a central angle of 42°59'03", a radius of 729.00 feet, and a long chord distance of 534.17 feet bearing N71°53'24"W to a point on a reverse curve to the right; thence along said curve 128.64 feet, said curve having a central angle of 27°11'48", a radius of 271.00 feet, and a long chord distance of 127.43 feet bearing N79°47'01"W to a point on a reverse curve to the left; thence along said curve a distance of 569.47 feet, said curve having a central angle of 44°45'26", a radius of 729.00 feet, and a long chord distance of 555.10 feet bearing

N88°33'51"W; thence S70°58'51"W a distance of 177.21 feet; thence N13°27'48"W a distance of 57.72 feet to a point on a curve to the left; thence along said curve a distance of 189.86 feet, said curve having a central angle of 60°46'17", a radius of 179.00 feet, and a long chord distance of 181.08 feet bearing N43°50'56"W; thence N00°04'37"W a distance of 221.80 feet; thence S89°55'23"W a distance of 746.02 feet; thence S00°04'37"E a distance of 162.31 feet; thence S52°17'29" a distance of 199.14 feet to a point on a non-tangent curve to the left; thence along said curve a distance of 45.77 feet, said curve having a central angle of 14°39'01", a radius of 179.00 feet, and a long chord distance of 45.65 feet bearing S30°23'00"W to a point on a non-tangent curve to the left; thence along said curve a distance of 106.18 feet, said curve having a central angle of 121°40'18", a radius of 50.00 feet, and a long chord length of 87.32 feet bearing S09°56'53"W; thence S39°06'44"W a distance of 78.44 feet; thence S00°00'00"E a distance of 168.54 feet; thence west along the north line of the south half of the Northwest Quarter of Section 24, Township 26 south, Range 1 West of the 6th P.M. to the east line of the Wichita-Valley Center Flood Control right-of-way; thence south along said east line to a line 650 feet north of and parallel to the south line of the north half of said Section 24; thence west along said south line and said line extended to the west mean high bank of the Arkansas River; thence southeasterly along said west mean high bank to the north line of the south half of Section 23, Township 26 South, Range 1 West of the 6th P.M.; thence west along said north line and the north line of the south half of Section 22, Township 26 South, Range 1 West of the 6th P.M. to the west line of the Southeast Quarter of said Section; thence south along said west line to the south line of said Section; thence east 30 feet along said south line; thence south along a line parallel to the west line of the Northeast Quarter of Section 27, Township 26 South, Range 1 West of the 6th P.M. to a point 30 feet north of the south line of Government Lot 5 in said Section; thence east along a line parallel to said south line to a point on the south right-of-way line of 45th Street North; thence southeasterly along said south right-of-way line to a point 30 feet south of the south line of said Government Lot 5; thence west parallel to said south line and said line extended to a point 30 feet west of the east line of the Northwest Quarter of said Section 27; thence north along a line parallel to said east line to a point 30 feet south and 30 feet west of the northeast corner of said Northwest Quarter; thence west 388.45 feet along a line parallel to the north line of said Northwest Quarter; thence south 356.25 feet along a line parallel to said east line to a point on the west line of Lot 13 and the northeast corner of Lot 15, Block A, Edgewater Addition; thence west along the north line of said Lot 15 to the northwest corner of Lot 16, Block A in said Addition; thence south along the west line of said Addition to the north right-of-way line of K-96 Highway; thence easterly along said north right-of-way line to a point located 208 feet west of the east line of the Northeast Quarter, Section 27, Township 26 South, Range 1 West of the 6th P.M.; thence north along a line parallel to said east line to a point 450 feet north of the south line of said Northeast Quarter; thence east along a line parallel to said south line to the west right-of-way line of Hoover Road; thence south along said west right-of-way line to the north right-of-way line of K-96 Highway; thence easterly along said north right-of-way line to the west mean high bank of the Arkansas River; thence southerly along said high bank to the south line of the north half of Section 36, Township 26 South, Range 1 West of the 6th P.M.; thence east along said south line to the west right-of-way line of Interstate Highway 235; thence southerly and southwesterly along said right-of-way to the north line of Section 1, Township 27 South, Range 1 West of the 6th P.M.; thence west along said north line to the east right-of-way line of West Street; thence south along said east right-of-way line to the south right-of-way line of 29th Street North; thence west along said south right-of-way line to the west line of the north half of the Northeast Quarter of Section 2, Township 27 South, Range 1 West of the 6th P.M.; thence south along said west line to the south line of the north half of said Northeast Quarter; thence east along said south line of said north half a distance of 647.85 feet; thence southwesterly 979.38 feet to a point on the west line of the south half of said Northeast Quarter, said point being 735.71 feet south of the north line of the said south half; thence south along the west line of said south half and the north half of the Southeast Quarter of Section 2, Township 27 South, Range 1 West of the 6th P.M. to the south line of the said north half; thence east along the south line of said north half to the west line of the Big Slough-Cowskin Creek Floodway; thence southwesterly along said west line to the north right-of-way line of 21st Street North; thence west along said north right-of-way line to the east line of the Southwest Quarter of Section 2, Township 27 South, Range 1 West of the 6th P.M.; thence north along said east line to a point 264 feet north of the south line of said Southwest Quarter; thence west parallel to said south line a distance of 165 feet; thence south parallel to the east line of said Southwest Quarter to the north right-of-way line of 21st Street North; thence west along said north right-of-way line to the east line of said Southwest Quarter; thence north along said east line to the north line of said Southwest Quarter; thence west along said north line to the east right-of-way line of Hoover; thence north along said east right-of-way line to a point 2099.9 feet south of the north line of Section 2, Township 27 South, Range 1 West of

the 6th P.M.; thence east along a line parallel with said north line to a point 245.7 feet east of the west line of said section; thence north parallel to the west line of said section a distance of 531.9 feet; thence east parallel to the north line of said Section a distance of 286.2 feet; thence north parallel to the west line of said Section a distance of 245.7 feet; thence west parallel to the north line of said section a distance of 501.9 feet to the east right-of-way line of Hoover Road; thence north along said east right-of-way line to the south right-of-way line of 29th Street North; thence west along said south right-of-way line to the west right-of-way line of Hoover Road; thence north along said west right-of-way line to a point 300 feet north of the south line of the north half of the Northeast Quarter of Section 34, Township 26 South, Range 1 West of the 6th P.M., thence west parallel to said south line 841 feet; thence south parallel to the east line of said Northeast Quarter to the south line of the north half of said Northeast Quarter; thence west along said south line to the east line of the Northwest Quarter of Section 34, Township 26 South, Range 1 West of the 6th P.M.; thence north along said east line and said east line extended to the north right-of-way line of 37th Street North; thence west along said north line to the east right-of-way line of Ridge Road; thence north along said east right-of-way line to the south right-of-way line of K-96 Highway; thence west along said south right-of-way line to the north line of the Southeast Quarter of Section 28, Township 26 South, Range 1 West of the 6th P.M.; thence west along said north line and the north line of the Southwest Quarter of said Section 28 to the east right-of-way line of Tyler Road; thence south along said east line to a point 855 feet north of the south line of said Southwest Quarter; thence east parallel to said south line to a point 264 feet east of the west line of said Southwest Quarter; thence south to the north right-of-way line of 37th Street North, thence west along said north right-of-way line to the east right-of-way line of Maize Road; thence north along said east right-of-way line to the north line of the south half of the Southeast Quarter of Section 30, Township 26 South, Range 1 West of the 6th P.M. as extended east; thence west along said line and said line extended to the west line of said Southeast Quarter; thence south along said west line to the south right-of-way line of 37th Street North; thence west along said south line 419.2 feet; thence south parallel with the east line of the Northwest Quarter of Section 31, Township 26 South, Range 1 West of the 6th P.M. to a point 1039.65 feet south of the north line of said Northwest Quarter; thence east parallel to the north line of said Northwest Quarter to the east line of said Northwest Quarter; thence north along said east line to the south right-of-way line of 37th Street North; thence east along said south line to a point 1573.47 feet west of the east line of the Northeast Quarter of Section 31, Township 26 South, Range 1 West of the 6th P.M.; thence south parallel with said east line 981.06 feet; thence east parallel with the north line of said Northeast Quarter 750 feet; thence north parallel with the east line of said Northeast Quarter 513.04 feet; thence west parallel to the north line of said Northeast Quarter 117.17 feet; thence north parallel to the east line of said Northeast Quarter 470 feet to the south right-of-way line of 37th Street North; thence east along said south line to the west right-of-way line of Maize Road; thence south along said west line to a point 190 feet south of the north line of the southeast quarter of the Southeast Quarter of Section 31, Township 26 South, Range 1 West of the 6th P.M.; thence west parallel to the said north line to the west line of the southeast quarter of said Southeast Quarter; thence north along said west line to the north line of the southwest quarter of said Southeast Quarter; thence west along said north line to the west line of said Southeast Quarter; thence north along said west line to the north line of the Southwest Quarter of said Section 31; thence west along said north line to the east right-of-way line of 119th Street West; thence south along said east right-of-way line to the south right-of-way line of 29th Street North; thence west along said south right-of-way line to a point 1368.74 feet west of the east line of the Northeast Quarter of Section 1, Township 27 South, Range 2 West of the 6th P.M.; thence southerly perpendicular to the north line of said Northeast Quarter, 260.00 feet; thence easterly parallel with the north line of said Northeast Quarter, 340.00 feet; thence southerly perpendicular to the north line of said Northeast Quarter, 1340.74 feet to a point 1600.74 feet normally distant south of the north line of said Northeast Quarter; thence northeasterly, 418.36 feet to a point 1430.63 feet normally distant south of the north line of said Northeast Quarter and 600 feet normally distant west of the east line of said Northeast Quarter; thence northerly parallel with the east line of said Northeast Quarter, 250.00 feet ; thence easterly perpendicular to the east line of said Northeast Quarter, 340.00 feet; thence southerly parallel to the east line of said Northeast Quarter, 267.00 feet; thence easterly perpendicular to the east line of said Northeast Quarter, to the west right-of-way line of 119th Street West; thence south along said west right-of-way line to the north line of the south half of the Southeast Quarter of Section 1, Township 27 South, Range 2 West of the 6th P.M. to a point 507.9 feet east of the west line of said Southeast Quarter; thence north 15 feet; thence west parallel to the north line of said Southeast Quarter to the west line of the Northeast Quarter of said Section 1; thence south along said west line and the west line of the Southeast Quarter of said Section 1 to a point 1689.32 feet north of the south line of said Southeast Quarter; thence east 162.2 feet; thence south 199.32 feet; thence east 340 feet to a

point 2101 feet west and 1490 feet north of the southeast corner of said Southeast Quarter; thence south 500 feet; thence east 30 feet; thence south to the north right-of-way line of 21st Street North; thence east along said north line to a point 680 feet west of the east line of said Southeast Quarter; thence south to the south right-of-way line of 21st Street North; thence west along said south line to a point 329.11 feet east of the northwest corner of the Northeast Quarter of Section 12, Township 27 South, Range 2 West; thence south to the south line of the north half of said Northeast Quarter; thence west along said south line to a point 190 feet east of the west line of said Northeast Quarter; thence south to the south line of said Northeast Quarter; thence west along said south line to the west line of the Southeast Quarter of section 12, Township 27 South, Range 2 West of the 6th P.M.; thence south along said west line 655.62 feet to the center line of the Cowskin Creek; thence easterly, southerly and northerly along said center line to the intersection of said centerline with the south line of Lot 16, Autumn Ridge Second Addition to Wichita, Sedgwick County, Kansas as extended to the west; thence east along said south line extended to the southwest corner of said Lot 16; thence southerly along the west line of Autumn Ridge Second Addition and the east line of the Floodway Reserve Agreement (dedicated on Film 979, Page 1029) to the north right-of-way line of 13th Street North; thence west along said north right-of-way line to a point 429 feet west of the east line of the Southwest Quarter of Section 12, Township 27 South, Range 2 West; thence north parallel with the east line of said Southwest Quarter to a point 990 feet north of the south line of said Southwest Quarter; thence west parallel with said south line to a point 470 feet east of the west line of said Southwest Quarter; thence south parallel with said west line to a point 511.5 feet north of the south line of said Southwest Quarter; thence west parallel with said south line and south line of Section 11, Township 27 South, Range 2 West of the 6th P.M. to the west right-of-way line of 135th Street West; thence north along said west right-of-way line to the north line of the southeast quarter of the Northeast Quarter of Section 11, Township 27 South, Range 2 West of the 6th P.M.; thence west along said north line to the east line of the northwest quarter of the Northeast Quarter of said Section, thence north to the south right-of-way line of 21st Street North; thence west along said south right-of-way line to a point 441.92 feet east of the west line of said Northeast Quarter; thence south parallel to said west line a distance of 800 feet; thence east parallel with the north line of said Northeast Quarter a distance of 238.40 feet; thence south parallel to the north line of said Northeast Quarter a distance of 450 feet; thence west parallel to the north line of said Northeast Quarter to the west line of said Northeast Quarter; thence south along said west line to the north line of the south half of Section 11; thence west along said north line to a point 730.08 feet west of the east line of the Southwest Quarter of said Section; thence S 00° 29' 15" E a distance of 599.25 feet; thence S 84° 35' 27" W a distance of 193.60 feet; thence S 01° 07' 09" E a distance of 413.54 feet; thence S 36° 13' 57" W a distance of 260.83 feet; thence S 03° 34' 31" W a distance of 463.07 feet; thence S 74° 45' 00" W a distance of 339.53 feet; thence S 03° 43' 09" E a distance of 217.63 feet; thence S 35° 57' 09" E a distance of 407.18 feet; thence S 01° 18' 36" W a distance of 240.28 feet to the north right-of-way line of 13th Street North; thence east along said north right-of-way line to the west line of the east half of the Southeast Quarter of Section 11, Township 27 South, Range 2 West of the 6th P.M.; thence south along said west line and the west line of the east half of the Northeast Quarter of Section 14, Township 27 South, Range 2 West of the 6th P.M. to the south line of said Northeast Quarter; thence east along said south line and the south line of the Northwest Quarter of Section 13, Township 27 South, Range 2 West of the 6th P.M. to the northwest corner of the Southeast Quarter of said Section 13; thence south along the west line of said Southeast Quarter to the north right-of-way line of Central; thence west along said north right-of-way line to the west line of Block 1, Rainbow Lakes Estates extended north; thence south along said west line to the north line of Section 24, Township 27 South, Range 2 West; thence west along said north line to the west right-of-way line of 135th Street West; thence south along said west line to the south right-of-way line of Central; thence west along said south line to the west line of the Northeast Quarter of Section 23, Township 27 South, Range 2 West of the 6th P.M.; thence south along said west line to the northeast corner of the Southwest Quarter of said Section 23; thence west along the north line of said Southwest Quarter to the west line of the east half of said Southwest Quarter; thence south along said west line to the north right-of-way line of Maple; thence west along said north right-of-way line to a point 400 feet east of the west line of the southeast quarter of the Southeast Quarter of Section 22, Township 27 South, Range 2 West of the 6th P.M.; thence north along a line parallel to said west line to the north line of the said southeast quarter of the Southeast Quarter; thence west 400 feet along said north line to said west line; thence south along said west line to said north right-of-way line; thence west along said north right-of-way line to the west line of said Southeast Quarter; thence south along said west line and the east line of the Northwest Quarter of Section 27, Township 27 South, Range 2 West of the 6th P.M.; thence south along said east line to the south line of the north half of said Northwest Quarter; thence west along said line to a point 1320 feet east of the west

line of said Northwest Quarter; thence north parallel to the west line of said Northwest Quarter 267.3 feet; thence east parallel to the south line of said Northwest Quarter to the west right-of-way line of 162nd Street West; thence north along said west right-of-way line 390.7 feet; thence west parallel to the south line of said Northwest Quarter 295.31 feet; thence south parallel to the west line of said Northwest Quarter 328 feet; thence west parallel to the south line of said Northwest Quarter to the east right-of-way line of 167th Street West; thence south along said east line to the north right-of-way line of U.S. Highway 54; thence east along said north line to the west line of the Southeast Quarter of Section 27, Township 27 South, Range 2 West of the 6th P.M.; thence north along said west line to the north line of said Southeast Quarter; thence east along said north line to the east right-of-way line of Reece Road; thence south along said east line to the south right-of-way line of Moscelyn Lane; thence east and easterly along said south line to the west right-of-way line of 151st Street West; thence south along said west line to the north right-of-way line of Grassmere Lane; thence west along said north line to the west line of Tapestry Meadows Third Addition, said line being 997 feet west of the east line of said Southeast Quarter; thence south along said west line and the west line of Tapestry Meadows Second Addition to the north right-of-way line of U.S. 54 Highway; thence east along said north line to the east right-of-way line of 135th Street West; thence north along said east right-of-way line to the north line of the Southwest Quarter of Section 25, Township 27 South, Range 2 West of the 6th P.M.; thence east along said north line to a point located 900 feet west of the Northeast Corner of said Southwest Quarter; thence southeast to a point 500 feet south of said Northeast Corner, said point being located on the east line of said Southwest Quarter; thence south along said east line to a point 1722 feet north of the south line of said Southwest Quarter; thence west parallel to said north line 250 feet; thence south parallel said east line to the north right-of-way line of U.S. 54 Highway as condemned in Case No. A-38302; thence east along said north right-of-way line to the west right-of-way line of 119th Street West; thence south along said west right-of-way line to the north line of the Southeast Quarter of Section 36, Township 27 South, Range 2 West of the 6th P.M.; thence west along said north line to the east line of the west half of said Section, thence north along said east line to the south right-of-way line of the A.T. & S.F. Railroad; thence westerly along the said south right-of-way to the east line of Lot 1, Centennial Sub, Sedgwick County, Kansas, said line being located 350 feet east of the west line of said Section; thence south along said east line a distance of 215 feet to the south line of said subdivision; thence westerly along said south line and south right-of-way line of 135th Street West to the west line of said Section; thence south along said west line to the south line of the Northwest Quarter of said Section; thence east along said south line and the north line of the Southwest Quarter of said Section to the east right-of-way line of 135th Street West; thence south along said east right-of-way line to a point 886.79 feet north of the south line of said Southwest Quarter; thence east parallel to said south line to a point 249.20 feet east of the west line of said Section; thence south parallel to the west line of said Section a distance of 259.16 feet; thence west parallel to the south line of said section to the east right-of-way line of 135th Street West; thence south along said east right-of-way line to the south right-of-way line of Pawnee; thence east along said south right-of-way line to a point 1111.66 feet west of the east line of the Northwest Quarter of Section 1, Township 28 South; Range 2 West of the 6th P.M.; thence S 01° 17' 03" W a distance of 885.54 feet; thence N 88° 51' 55" E a distance of 22 feet; thence S 01° 17' 03" W a distance of 1559.19 feet to the south line of said Northwest Quarter; thence east along said south line and the south line of the Northeast Quarter of said Section to a point 175.95 feet east of the southwest corner of said Northeast Quarter; thence north parallel to the east line of said Northeast Quarter to a point 2428.17 feet west and 1376.46 feet south of the northeast corner of said Northeast Quarter; thence east along a line parallel to the north line of said Northeast Quarter to a point located 613.27 feet west of the east line of said Northeast Quarter; thence S03 02' 11"E, 79.17 feet; thence S29 23' 22"E, 210 feet; thence S03 02' 11"E, 215 feet; thence easterly to a point on the west right-of-way line of 119th Street West located 1,856.85 feet south, more or less, of the north line of said Northeast Quarter; thence north along said west right-of-way line to a point located 353.94 feet south of the north line of said Section 1 and said line extended east to the east right-of-way line of 119th Street West; thence north along said east right-of-way line to the south right-of-way line of Pawnee; thence east along said south right-of-way line to the west line of the Northeast Quarter of Section 6, Township 28 South, Range 1 West of the 6th P.M.; thence south along said west line to the south line of said Northeast Quarter; thence east along said south line and the south line of the Northwest Quarter of Section 5, Township 28 South, Range 1 West of the 6th P.M. to the west line of the east half of said Section; thence south along said west line of said east half and the west line of the east half of Section 8, Township 28 South, Range 1 West of the 6th P.M. to the south right-of-way line of 31st Street South; thence west along said south line to the east right-of-way line of Maize Road; thence south along said east line to the north right-of-way line of K-42 Highway; thence northeasterly along said north line to a point

50 feet west of the east line of the Northeast Quarter, Section 9, Township 28 South, Range 1 West; thence south parallel to said east line to a line 50 feet south of and parallel to the south right-of-way line of the Atchison, Topeka and Santa Fe Railroad; thence southwesterly along said line to a point 417.29 feet west of the east line of said Quarter Section measured along said line; thence northwesterly at right angles to said line 50 feet to the south line of said Railroad right-of-way; thence southerly and westerly along the south right-of-way line of the Atchison, Topeka and Santa Fe Railroad to the east right-of-way line of Maize Road; thence south along said east line to the north right-of-way line of MacArthur Road; thence east along said north line to the east right-of-way line of Tyler Road; thence north along said east line to the south line of the north half of the Southwest Quarter of Section 9, Township 28 South, Range 1 West extended west; thence east along said south line to the east line of said Southwest Quarter; thence north along said east line of said Southwest Quarter to the southwest corner of the Northeast Quarter of said Section 9; thence east along the south line of said Northeast Quarter to the west right-of-way line of Ridge Road; thence north along said west line and said line extended to the north right-of-way line of Highway K-42; thence northeasterly along said right-of-way line to a point two hundred ten (210) feet west of the Center Line of Section 3, Township 28 South, Range 1 West of the 6th P.M.; thence north along a line parallel to and two hundred ten (210) feet west of said Center Line a distance of three hundred twenty-eight and three tenths (328.3) feet; thence west at ninety (90) degrees a distance of three hundred ninety (390) feet; thence north along a line parallel to and six hundred (600) feet west of the Center Line of said Section 3 to a point three hundred twenty-seven and four tenths (327.4) feet south and 600 feet west of the southwest corner of the northwest quarter of the Northeast Quarter of said Section 3; thence east at ninety (90) degrees to a point on the Center Line of said Section 3, three hundred twenty-seven and four tenths (327.4) feet south of the southwest corner of the northwest quarter of the Northeast Quarter of said Section 3; thence north to said southwest corner; thence east along the south line of the north half of the Northeast Quarter of said Section 3 to the west right-of-way line of Hoover Road; thence south along said west line to the south right-of-way line of 31st Street South; thence west along said south line to the west line of the J.I. Case Addition; thence south along said west line a distance of 410 feet; thence east 190 feet; thence south along said west line to the north line of Ecco Industrial Addition; thence west along said north line of said Addition to the west line of Ecco Industrial Addition; thence south along said west line to the northeast corner of the Southwest Quarter of Section 10, Township 28 South, Range 1 West; thence west along the north line of said Southwest Section to a point 242.4 feet east of the west line of said Southwest Quarter; thence south parallel with said west line 225 feet; thence east parallel with the north line of said Southwest Quarter to the west right-of-way line of Summitlawn Avenue; thence south along said west line to the north right-of-way line of 35th Street South; thence west along said north line to the east line of Ridge Road; thence south along said east line of Ridge Road to the south line of the north half of the Southwest Quarter of Section 10, Township 28 South, Range 1 West of the 6th P.M.; thence east along said south line to the east line of said Southwest Quarter; thence south along said east line to the north right-of-way line of MacArthur Road; thence east along said north right-of-way line to the east right-of-way line of West Street; thence north along said east right-of-way line to the most westerly southwest corner of Lot 1, Block A, Pretty Prairie Addition; thence east along the south line of said Lot 1 to a point 230 feet east of the west line of the Southwest Quarter of Section 12, Township 28 South, Range 1 West of the 6th P.M.; thence south along the west line of said Lot 1 to the south line of said Lot 1; thence southeasterly along said south line of said Lot 1 and the south line of Lot 2, Block A, Pretty Prairie Addition to the east line said Lot 2; thence north along said east line to the south line of Rainbow Sales Addition; thence east along said south line to the east line of said Addition; thence north along said east line of said Addition to a point 350 feet north of the south line of said Southwest Quarter; thence east, parallel with said south line, 180 feet; thence north parallel to the east line of said Southwest Quarter, to the southeast corner of Trimmel Addition; thence north along the east line of Trimmel Addition and the east line of Carmichael Addition to the southerly right-of-way line of Interstate 235 Highway; thence southerly and easterly along said right-of-way line to a point 1998.2 feet east of the west line of the Southwest Quarter of Section 12, Township 28 South, Range 1 West of the 6th P.M.; thence south parallel to said west line to the north right-of-way line of MacArthur Road; thence east along said north line to a point 359.34 feet west of the east line of said Southwest Quarter; thence north parallel to said east line to a point 359.34 feet west and 610.4 feet north of the southeast corner of said Southwest Quarter; thence east 194.34 feet to a point 610.4 feet north and 165 feet west of said southeast corner; thence north to a point 165 feet west of and 1326 feet north of said southeast corner, thence east to the east line of said Southwest Quarter; thence south along said east line to a point one thousand three hundred twenty and six tenths (1320.6) feet, more or less, north of the south line of the Southeast Quarter of said Section 12; thence east parallel with said south line to the west right-of-way line of Meridian

Avenue; thence south along said west line to a point 168.3 feet north of the south line of the Northeast Quarter, Section 13, Township 28 South, Range 1 West of the 6th P.M.; thence west 203.8 feet; thence south 168.3 feet to the south line of the north half of said Section 13; thence west along the south line of said north half to the southeast corner of the Northwest Quarter of said Section 13; thence north along the east line of said Northwest Quarter to the north line of the south half of the south half of said Northwest Quarter; thence west along said north line to a point 660 feet east of the west line of said Northwest Quarter; thence south parallel with the west line of said Northwest Quarter 395 feet; thence west parallel with the south line of said Northwest Quarter to the east right-of-way line of West Street; thence south along said east line to a point 754 feet north of the south line of the Southwest Quarter Section 13, Township 28 South, Range 1 West of the 6th P. M.; thence east parallel to said south line to a point 208.71 feet east of the west line of said Southwest Quarter; thence south parallel to the west line of said Southwest Quarter 135 feet; thence east parallel to the south line of said Southwest Quarter to a point 600 feet east of the west line of said Southwest Quarter; thence south parallel to said west line to the north right-of-way line of 47th Street South; thence east along said north line to the west line of the Southeast Quarter of Section 13, Township 28 South, Range 1 West of the 6th P.M.; thence north along said west line to the north line of the south half of said Southeast Quarter; thence east along said north line to the west line of the east half of said Southeast Quarter; thence south along said west line to the north right-of-way line of 47th Street South; thence east along said north line to a point 380 feet west of the east line of said Quarter Section; thence north parallel to said east line to a point 380 feet north of the south line of said Quarter Section; thence east parallel to said south line to the west right-of-way line of Meridian Avenue; thence south along said west line to the south right-of-way line of 47th Street South; thence west along said south line to the west line of the east half of the Northeast Quarter of Section 24, Township 28 South, Range 1 West; thence south along said west line to the south line of said Northeast Quarter; thence west along said south line to the east line of the west half of the west half of said Northeast Quarter; thence north along said east line to the south right-of-way line of 47th Street South; thence west along said south line to the west line of said Northeast Quarter; thence south along said west line of said Northeast Quarter and the west line of the northwest quarter of the Southeast Quarter of said Section 24 to the south line of said northwest quarter of the Southeast Quarter; thence east along said south line and the south line of the northeast quarter of said Southeast Quarter to the west line of the east half of Section 19, Township 28 South, Range 1 East extended; thence south along said west line and said line extended to the south right-of-way line of 55th Street South; thence west along said south line to the west line of the east half of the northeast quarter of the Northwest Quarter of Section 30, Township 28 South, Range 1 East of the 6th P.M.; thence south along said west line to the south line of the northeast quarter of said Northwest Quarter; thence east along said south line to the west line of the Northeast Quarter of Section 30, Township 28 South, Range 1 East of the 6th P.M.; thence south along said west line to the north line of the Southeast Quarter of said Section 30; thence east along said north line to a point 400 feet west of the east line of the west half of said Southeast Quarter; thence south parallel to said west line to the north right-of-way line of 63rd Street South; thence east along said north right-of-way line to the east right-of-way line of the Union Pacific Railroad; thence northeasterly along said east right-of-way line to the south line of the north half of Section 29, Township 28 South, Range 1 East of the 6th P.M.; thence east along said south line to the west line of the Southeast Quarter of said Section; thence south along said west line to the south right-of-way line of 59th Street South; thence east along said south right-of-way line to the west right-of-way line of Broadway Avenue; thence north along said west right-of-way line to the north line of said Southeast Quarter; thence east along said north line and the south line of the Northwest Quarter of Section 28, Township 28 South, Range 1 East of the 6th P.M. to the east line of said Northwest Quarter; thence north along said east line to the north line of the south half of the Northeast Quarter of Section 28, Township 28 South, Range 1 East of the 6th P.M.; thence east along said north line to the north line of the Riverside Drainage Canal; thence east along said north line to the west right-of-way line of Hydraulic; thence south along said west right-of-way line to the north line of Becker Addition, Sedgwick County, Kansas; thence west along north line of said Addition to a point 486.8 feet west of the east line of the Southeast Quarter of Section 24, Township 28 South, Range 1 West, said point being the west line of Becker Addition; thence south 301.17 feet along said west line to the north line of the Southeast Quarter of said Section 24; thence west along said north line to the east right-of-way line of the Kansas Turnpike; thence southerly along said east right-of-way line to the west line of said Southeast Quarter; thence south along said west line to the north right-of-way line of 63rd Street South; thence east along said north right-of-way line to the west right-of-way line of Hydraulic; thence south along said west right-of-way line to a point 660.04 feet north of the north line of the south half of the Northeast Quarter of Section 33, Township 28 South, Range 1 East of the 6th P.M.; thence west along a line

parallel to said north line to a point 660.04 feet west of the east line of said Northeast Quarter; thence south along a line parallel to said east line to the north line of the south half of said Northeast Quarter; thence west along said north line to the west line of said Northeast Quarter; thence south along said west line to the north right-of-way line of the Big Ditch Cowskin Floodway; thence southeasterly along said north line to the west right-of-way line of Hydraulic Avenue; thence south along said west right-of-way line to the north line of the Southeast Quarter of Section 33, Township 28 South, Range 1 East of the 6th P.M.; thence east along said north line and said line extended to the north right-of-way line of the Big Ditch Cowskin Floodway; thence southeasterly and easterly along said north line to the south line of the Riverside Levee; thence northwesterly along said south line to the east line of the Southeast Quarter of Section 34, Township 28 South, Range 1 East; thence south along said east line to the north line of the south half of said Southeast Quarter; thence west along said north line to the east right-of-way line of Grove Street; thence north along said east right-of-way line to a point 203.32 feet south of the north line of said Southeast Quarter; thence east parallel to said north line 270 feet; thence north parallel to the west line of said Southeast Quarter and said line extended to a point 137 feet north of the north line of said Southeast Quarter; thence west parallel to said north line to the east right-of-way line of Grove Street; thence north along said east right-of-way line to a point located 831.96 feet, more or less, south of the north line of the Northeast Quarter of said Section 34; thence southeasterly a distance of 563.09 feet more or less; thence northeasterly 144.3 feet more or less to a point on the south line of the Riverside Levee; thence northwesterly along said south line to the east right-of-way line of Grove Street and said line extended to the north right-of-way line of 63rd Street South; thence east along said north right-of-way line to the west line of the eastern portion of the Riverside Levee; thence northeasterly along said west line to the east line of the Southwest Quarter of Section 27, Township 28 South, Range 1 East of the 6th P.M.; thence north along said east line to the south line of Government Lot 7, located in the Southeast Quarter of Section 27, Township 28 South, Range 1 East of the 6th P.M.; thence east along said south line to the right bank of the Arkansas River; thence northerly along said right bank to the south line of Mona Kay Matlock Addition extended from the west; thence west to the westerly right-of-way line of the Riverside Levee; thence northerly along said right-of-way line to the north line of the Northwest Quarter of Section 22, Township 28 South, Range 1 East of the 6th P.M.; thence east along said north line to the right bank of the Arkansas River; thence northerly along said right bank to the northerly right-of-way line of the Kansas Turnpike; thence easterly along said right-of-way line to the south line of the north half of Section 11, Township 28 South, Range 1 East of the 6th P.M.; thence east along said south line to the east line of Lot 6, Block 3, Turnpike Industrial Addition; thence north along the east line of Lots 6, 5, 4, and 3 in said Block 3, to the south line of Lot 2 in said Block 3; thence east along the south line of Lots 2 and 1 in said Block 3, to the east line of said Lot 1; thence north along said east line to the south line of Colfax Avenue; thence east along said south line and said line extended to the east right-of-way line of Oliver Street; thence north along said east line to the south right-of-way line of 31st Street South; thence east along said south right-of-way line to a point 2,170.42 feet east of the northwest corner of the Northwest Quarter of Section 12, Township 28 South, Range 1 East of the 6th P.M.; thence 490.25 feet on a bearing of S 00°00'00"W; thence 253.90 feet on a bearing of S18° 46'00"W; thence 389.40 feet on a bearing of S50°29'00"W; thence 285.26 feet on a bearing of S62°51'00"W; thence 26.76 feet on a bearing of S68°07'15"W; thence 553.32 feet on a bearing of S34°39'05"E; thence 529.18 feet on a bearing of N73°30'20"E; thence 377.90 feet on a bearing of N13°25'00"E; thence 176.92 feet on a bearing of N76° 35'45"W; thence 100.00 feet on a bearing of N01°19'30"E; thence 146.51 feet on a bearing of N07°44'55"W; thence 89.02 feet on a bearing of N65°26'40"W to a point of intersection with a curve; thence northerly 421.20 feet along a curve to the left having a central angle of 19° 56'45" with a radius of 1209.92 feet, and with a great chord of 419.08 feet having a bearing of N12°50'55"E to a point of intersection with a radial line of said curve; thence 6.59 feet on a bearing of N87°07'30"W along the radial line of said curve to a point of intersection with a curve; thence northerly 294.20 feet along a curve to the left having a central angle of 11° 20'05" with a radius of 1489.52 feet, and with a great chord of 294.10 feet having a bearing of N02°47'30"W to a point of tangency; thence 30.33 feet on a bearing of N08°27'25"W along the tangent to the preceding curve to the south right-of-way line of 31st Street South; thence east along said south right-of-way line to the east right-of-way line of George Washington Boulevard; thence north along said east right-of-way line to the north right-of-way line of 31st Street South; thence east along said north right-of-way line to the east line of the Southwest Quarter of Section 1, Township 28 South, Range 1 East of the 6th P.M.; thence north along said east line to the north line of said Southwest Quarter; thence west along said north line to the east right-of-way line of George Washington Boulevard; thence northwesterly along said east line to the south right-of-way line of the Kansas Turnpike; thence northeasterly along said right-of-way line to a line 300 feet south

and parallel to the south right-of-way line of Pawnee Avenue; thence east on said line to the east line of the Northwest Quarter of said Section 1; thence north to the northerly right-of-way line of the Kansas Turnpike; thence northeasterly along said right-of-way line to the south right-of-way line of Harry; thence east along said south line to the west line of the east half of the Northeast Quarter, Section 31, Township 27 South, Range 2 East; thence south along said west line to the south line of said Northeast Quarter; thence east along said south line to the west right-of-way line of Rock Road; thence south along said west line to a point forty (40) feet south of the north line of the Northeast Quarter, Section 6, Township 28 South, Range 2 East of the 6th P.M.; thence east parallel to the north line of said Northeast Quarter and the north line of the Northwest Quarter, Section 5, Township 28 South, Range 2 East of the 6th P.M., to the east right-of-way line of Rock Road; thence south along said east line to the south line of said Northwest Quarter; thence east along said south line and said line extended to a point on the north line of the Southeast Quarter, Section 5, Township 28 South, Range 2 East, said point being 240 feet east of the northwest corner of said Southeast Quarter; thence south parallel with the west line of said Southeast Quarter, 1015.17 feet more or less to a point 310 feet north of the south line of the northwest quarter of said Southeast Quarter; thence west parallel with the south line of the northwest quarter of said Southeast Quarter 105 feet; thence south parallel with the west line of said Southeast Quarter 310 feet to a point on the south line of the northwest quarter of said Southeast Quarter; thence east along the south line of the northwest quarter of said Southeast Quarter 578.01 feet; thence north parallel with the west line of said Southeast Quarter, 515 feet; thence northeasterly 281.42 feet more or less to a point 912 feet east of the west line of said Southeast Quarter as measured parallel with the north line of said Southeast Quarter and said point being 610.62 feet south of the north line of said Southeast Quarter as measured parallel with the west line of said Southeast Quarter; thence north parallel with the west line of said Southeast Quarter 483.57 feet; thence east at right angles to the last described line 18 feet; thence north parallel with the west line of said Southeast Quarter 127.05 feet to a point on the north line of said Southeast Quarter; thence east along said north line and the south line of the Northeast Quarter of Section 5, Township 28 South, Range 2 East of the 6th P.M. to a point 300 feet east of the west line of the east half of said Northeast Quarter; thence north along a line parallel to said west line a distance of 365 feet; thence west parallel to the south line of said Northeast Quarter to the west line of the east half of said Northeast Quarter; thence north along the west line of said east half a distance of 406.66 feet; thence east parallel with the south line of said Northeast Quarter a distance of 184 feet; thence north along a line parallel to the west line of the east half of said Northeast Quarter a distance of 498.11 feet to the south line of the northeast quarter of said Northeast Quarter; thence east along said south line to the west right-of-way line of Webb Road; thence north along said west right-of-way line a distance of 167 feet; thence west a distance of 302 feet to a point on the east line of Lot 8, Block 3, Turtle Run 2nd Addition; thence north along the east line of Block 3, Turtle Run 2nd Addition a distance of 277 feet; thence east to the west right-of-way line of Webb Road; thence north along said west right-of-way line to the south right-of-way line of Pawnee; thence east to the east right-of-way line of Webb Road; thence north along said east right-of-way line to the north right-of-way line of Pawnee; thence east along said north line to the east line of the Southwest Quarter of Section 33, Township 27 South, Range 2 East of the 6th P.M.; thence north along said east line to the south line of the north half of said Section 33; thence east along said south line and the south line of the north half of Section 34, Township 27 South, Range 2 East of the 6th P.M. to the west line of the East Half of said Section 34; thence south along said west line to the north right-of-way line of Pawnee; thence east along said north right-of-way line to the southeast corner of Reserve D, Sierra Hills 2nd Addition; thence northerly and easterly along the east line of said Addition to the northeast corner of Reserve E, said Addition; thence west 1,360.97 feet along the north line of said Addition; thence north 1,570.75 feet along the east line of said Addition to the northeast corner of Lot 1, Block 4 of said Addition and the north line of the Southeast Quarter of Section 35, Township 27 South, Range 2 East of the 6th P.M.; , thence west along said north line to the east line of the west half of said Section; thence north along said east line and said line extended to the north right-of-way line of Harry Street; thence west along said north right-of-way line to a point 1,540.52 feet east of the west line of the Southwest Quarter of Section 26, Township 27 South, Range 2 East of the 6th P.M.; thence north along a line parallel to said west line to a point in the centerline of a creek, said point being located 105 feet north of the south line of said Southwest Quarter; thence northerly and easterly along the centerline of the creek to a point 343.18 feet west of the east line of said Southwest Quarter; thence north parallel to said east line to the south line of the north half of said Southwest Quarter; thence east to the east line of said Southwest Quarter; thence north along said east line a distance of 627.26 feet; thence N32°21'18"W, 270.00 feet; thence N60°42'49"W, 632.00 feet; thence N28°20'44"W, 109.83 feet; thence S88°45'24"W, parallel with said north line, 134.79 feet; thence N01°14'36"W, 50.00 feet to the north line of said Southwest Quarter; thence east along said north line and

north line of the Southeast Quarter of said Section 26 to a point located 1642.06 feet west of the northeast corner of said Southeast Quarter; thence south parallel to the east line of said Southeast Quarter to the north right-of-way line of Harry Street; thence west along said north right-of-way line to a point 1817 feet west of the east line of said Southeast Quarter; thence south on a line parallel to said east line and the east line of the Northeast Quarter of Section 35, Township 27 South, Range 2 East of the 6th P.M. to a point 177.02 feet south of the south line of Timber Valley Estates 3rd Addition, Sedgwick County, Kansas; thence southwesterly, 132.02 feet; thence southeasterly, 115 feet; thence southwesterly, 15 feet; thence southeasterly, 74 feet to a curve; thence southeasterly along said curve, 233.74 feet; thence easterly to an intersection with the west right-of-way line of 143rd Street East; thence north along said west right-of-way line to the south right-of-way line of Harry Street; thence east along said south right-of-way to the west line of the East Evangelical Free Church Addition; thence south along said west line to the south line of said Addition; thence east along said south line a distance of 395 feet to the west line of Arbor Lakes Estates Addition, said line being the west line of the Northeast Quarter of the Northwest Quarter of Section 36, Township 27 South, Range 2 East of the 6th P.M.; thence south along said west line a distance of 566.56 feet to the south line of the north half of said Northwest Quarter; thence east along said south line to the west line of the Northeast Quarter of said Section 36; thence south along said west line to the south line of said Northeast Quarter; thence east along said south line to the west right-of-way line of 159th Street East; thence north along said west right-of-way line to the south right-of-way line of Lincoln; thence west along said south right-of-way line to the east right-of-way line of Brookhaven; thence north on said east right-of-way line to the north line of the Southeast Quarter of Section 25, Township 27 South, Range 2 East of the 6th P.M.; thence west on said north line to the east line of the Northwest Quarter of said Section 25; thence north on said east line to the south right-of-way line of Kellogg Drive; thence west on said south right-of-way line to the west line of the east half of said Northwest Quarter; thence south on said west line to the north line of the Southwest Quarter of said Section 25; thence west on said north line to the east right-of-way line of 143rd Street East; thence north along said east right-of-way line to the south right-of-way line of U.S. Highway 54; thence west along said south right-of-way line and the southerly right-of-way line of K-96 Highway to the east right-of-way line of 127th Street East; thence north along said east right-of-way line to the north right-of-way line of the Kansas Turnpike; thence northeasterly along said north right-of-way line to the east line of the Northwest Quarter, Section 23, Township 27 South, Range 2 East; thence north along said east line to the south right-of-way line of Central; thence west along said south line to the east right-of-way line of the K-96 Highway; thence southerly along said east line to the north right-of-way line of the Kansas Turnpike; thence south along said north line to the north line of the Southwest Quarter of said Section 23; thence west along said north line to the west right-of-way line of K-96 Highway; thence northwesterly along said west line to the north line of Central; thence west along said north line to the east right-of-way line of 127th Street East; thence north along said east right-of-way line to the point of beginning; and in addition thereto the following tracts of land described as: A tract of land in Sections 34 and 35, Township 25 South, Range 2 East of the 6th P.M., Sedgwick County, Kansas described as: Beginning at the intersection of the east right-of-way line of Greenwich Road (111th Street East) and the south right-of-way line of 85th Street North; thence east along said south right-of-way line to the west right-of-way line of 127th Street East; thence south along said west right-of-way line to the north line of the Southwest Quarter, Section 35, Township 25 South, Range 2 East extended west; thence east along said north line to the east line of said Southwest Quarter; thence south along said east line to the north line of the south half of the Southeast Quarter, Section 35, Township 25 South, Range 2 East; thence east along said north line to the west right-of-way line of 143rd Street East; thence south along said west right-of-way line to the north right-of-way line of 77th Street North; thence west along said north right-of-way line to a point 485.8 feet east of the west line of the Southwest Quarter of Section 35, Township 25 South, Range 2 East; thence north parallel to said west line to a point 485.8 feet north of the south line of said Southwest Quarter; thence west to the west right-of-way line of 127th Street East; thence south along said west right-of-way line to the north right-of-way line of 77th Street North; thence west along said north right-of-way line to the west line of the east half of the Southwest Quarter, Section 34, Township 25 South, Range 2 East; thence north along said west line to the south line of the Northwest Quarter of Section 34, Township 25 South, Range 2 East; thence west along said south line to the east right-of-way line of Greenwich Road (111th Street East); thence north along said east right-of-way line to the point of beginning, EXCEPT for that part designated as 127th Street East.

And Also: Tracts of land in the Southeast Quarter of Section 1, Township 27 South, Range 2 East of the Sixth P.M. EXCEPT Beginning at the southeast corner of the northeast quarter of said Southeast Quarter; thence along the

south line of said northeast quarter of said Southeast Quarter on a Kansas coordinate system 1983 south zone bearing of S88°56'59"W, 933.12 feet; thence N00°34'25"W, 661.72 feet parallel with the west line of said northeast quarter; thence S88°58'38"W, 394.93 feet; thence N00°35'58"W, 666.09 feet to the northwest corner of said northeast quarter of said Southeast Quarter; thence N88°58'46"E, 1326.66 feet along the north line of said northeast quarter to the northeast corner of said Northeast Quarter; thence S00°38'46"E, 1327.30 feet along the east line of said Northeast Quarter to the Point of Beginning, EXCEPT for that part designated as 21st Street North, AND EXCEPT for that part designated as 159th Street East.

And Also:

A tract of land located in the Southwest Quarter of Section 21, Township 26 South, Range 2 East of the 6th P.M., described as: The south half of said Southwest Quarter of said Section, EXCEPT for that part designated as Webb Road right-of-way AND EXCEPT for that part designated as 45th Street North right-of-way.

And Also:

Tracts of land in Section 17 and Section 20, Township 26 South, Range 2 East of the 6th P.M., described as: Beginning at the southeast corner of the Southwest Quarter of said Section 17; thence north along the east line of said Southwest Quarter, 430.00 feet; thence west, parallel with the south line of said Southwest Quarter, 400.00 feet; thence south, parallel with the east line of said Southwest Quarter, 430.00 feet to a point on the south line of said Southwest Quarter; thence East along the south line of said Southwest Quarter, 400.00 feet to the place of beginning TOGETHER WITH that part of 53rd Street North described as: Beginning at the northeast corner of the Northwest Quarter of said Section 20; thence west along the north line of said Northwest Quarter to a point 400 feet west of the east line of said Northwest Quarter; thence south parallel with said east line to the south right-of-way line of 53rd Street North; thence east along said south right-of-way line to the east line of said Northwest Quarter; thence north along said east line to beginning.

And Also:

Tracts of land in the Northwest Quarter of Section 17, Township 26 South, Range 1 East of the 6th P.M. described as: Beginning at the intersection of the south right-of-way line of 61st Street North and the east right-of-way line of the St. Louis and San Francisco Railroad, thence easterly and southerly along said east right-of-way line to a line parallel to and 370.01 feet west of the east line of said Northwest Quarter; thence north parallel with said east line to said south right-of-way line; thence west along said south right-of-way line to point of beginning.

And Also:

A tract of land in the Southwest Quarter of Section 35, Township 26 South, Range 1 West of the 6th P.M. described as: Beginning at the intersection of the east right-of-way line of Hoover and the north right-of-way line of 29th Street North; thence northerly along said east right-of-way line to a point 400 feet north of the south line of said Southwest Quarter; thence east parallel with the south line of said Southwest Quarter to a point 800 feet east of the west line of said Southwest Quarter; thence south parallel with said west line to the north right-of-way line of 29th Street North; thence westerly along said north right-of-way line to beginning.

And Also:

The east half of the west half of the Northwest Quarter of Section 27, Township 26 South, Range 1 West of the 6th P.M.; EXCEPT for the east 458 feet of the north 452 feet of said east half; AND EXCEPT for that part designated as K-96 right-of-way; AND EXCEPT for that part designated as 45th Street North right-of-way.

And Also:

The Southwest Quarter of Section 25, Township 26 South, Range 2 West of the 6th P.M.; EXCEPT for that part beginning at the southwest corner of said Southwest Quarter; thence north along the west line of said Southwest Quarter, 530 feet; thence east parallel to the south line of said Southwest Quarter, 290.4 feet; thence south parallel to said west line, 340 feet; thence west parallel to said south line, 61.14 feet; thence south parallel to said west line, 190 feet to the south line of said Southwest Quarter; thence west along said south line to beginning; AND EXCEPT that part designated as 37th Street North right-of-way; AND EXCEPT that part designated as 135th Street West right-of-way.

And Also:

A tract of land in the south half of the Southeast Quarter of Section 2, Township 27 South, Range 2 West of the 6th P.M., described as follows: Beginning at the southeast corner of said Southeast Quarter; thence west along the south line of said Southeast Quarter, 1610.93 feet; thence north, parallel with the east line of said section, 609.35 feet; thence west, parallel with the south line of said section, 308.47 feet; thence north, parallel with the east line of said section, 704.11 feet; thence east, along the north line of the south half of said Southeast Quarter, 1919.42 feet to the east line of said Southeast Quarter; thence south, along the east line of said Southeast Quarter, 1315.48 feet to the point of beginning, EXCEPT that part designated as 21st Street North right-of-way AND EXCEPT that part designated as 135th Street West right-of-way.

And Also:

A tract of land in the Northwest Quarter of Section 12, Township 27 South, Range 2 West of the 6th P.M., described as: Beginning at a point 65 feet south and 50.59 feet east of the northwest corner of said Northwest Quarter; thence east parallel with the north line of said Northwest Quarter 441.26 feet; thence south parallel with the west line of said Northwest Quarter 431.85 feet; thence west parallel with the north line of said Northwest Quarter 466.85 feet; thence north to a point 450 feet south and 25 feet east of the northwest corner of said Northwest Quarter; thence northeasterly to a point 400 feet south and 40 feet east of the northwest corner of said Northwest Quarter; thence northerly to the point of beginning TOGETHER WITH Lot 1, Block 1, L.R. Jones, 2nd Addition, Sedgwick County, Kansas.

And Also:

A tract of land in the Northwest Quarter of Section 12, Township 27 South, Range 2 West of the 6th P.M. described as Lot 1, Block 2, L.R. Jones Second Addition, Sedgwick County, Kansas.

And Also:

Tracts of land in the Northwest Quarter of Section 34, Township 27 South, Range 2 West of the 6th P.M., described as:

Beginning at a point of the south right-of-way line of U.S. Highway 54, said point being 1016 feet west of the east line of said Northwest Quarter; thence south parallel to the west line of said Northwest Quarter to a point 559.21 feet north of the north right-of-way line of the Atchison, Topeka and Santa Fe Railroad; thence west parallel to the north line of said Northwest Quarter 300 feet; thence north parallel to the west line of said Northwest Quarter to a point 531.59 feet, more or less, south of the north line of said Northwest Quarter ; thence west parallel to the north line of said Northwest Quarter to the east right-of-way line of 167th Street West; thence north along said east right-of-way line to the south right-of-way line of U.S. Highway 54; thence east along said south right-of-way line to point of beginning.

And Also:

Tracts of land in the Northeast Quarter of Section 34, Township 27 South, Range 2 West of the 6th P.M., described as:

Beginning at the intersection of the south right-of-way line of U.S. Highway 54 and the east line of said Northeast Quarter; thence south along said east line 460 feet; thence west parallel to the north line of said Northeast Quarter 467 feet; thence north parallel to said east line to the south right-of-way line of U.S. Highway 54; thence east along said south right-of-way line to point of beginning.

And Also:

Tracts of land in the Northwest Quarter of Section 35, Township 27 South, Range 2 West of the 6th P.M., described as:

Beginning at a point of the south right-of-way line of U.S. Highway 54, said point being 396.69 feet east of the west line of said Northwest Quarter; thence south parallel to the west line of said Northwest Quarter 466.69 feet; thence west parallel to the north line of said Northwest Quarter to the east right-of-way line of 151st Street West; thence south along said east right-of-way line 162.2 feet; thence east parallel with the north line of said Northwest Quarter to a point on the west line of United Industrial Addition, said point being 546.69 feet east of said west line of said Northwest Quarter; thence south along said west line of said Addition to the south line of said Addition; thence east along said south line and south line extended to the east right-of-way line of United Circle; thence northerly along said east right-of-way line to the south right-of-way line of U.S. Highway 54; thence west along said south right-of-way line to the point of beginning.

And Also:

A tract of land in Section 7, Township 28 South, Range 1 West of the 6TH P.M., described as: Beginning at the intersection of the north right-of-way line of K-42 Highway (Condemnation Case 95C-186) and the west right-of-way line of Maize Road; thence north along said west right-of-way line to a point located 777.25 feet south of the north line of said Section; thence N90°00'00"W along a line parallel to said north line, to a point located 625 feet west of the east line of said Section; thence N00°24'04"W parallel with the east line of said Section, 333.30 feet, more or less; thence N90°00'00"E parallel with the north line of said Section, 256.47 feet; thence N01°35'13"E, 202.92 feet; thence N90°00'00"E parallel with said north line to the west right-of-way line of Maize Road; thence north along said west right-of-way line to the south right-of-way line of 31st Street South; thence west along said south right-of-way line to a point 538.07 feet east of the west line of the east half of said Section; thence S02°29'53"E parallel with the west line of the east half of said Section to a point 1142.10 feet south of the north line of said section; thence S90°00'00"W parallel with the north line of said Section, 538.07 feet to the west line of the east half of said Section; thence south along the west line of the east half of said Section, to a point 1,032.73 feet south of the northwest corner of the Southeast Quarter of said Section said point being the northernmost northeast corner of Lot 1, St. Peter The Apostle Catholic Church Addition; thence west along the north line of said addition to the northernmost northwest corner of said Addition; thence southerly and westerly along the west line of said Addition to the north right-of-way line of Peter Avenue; thence east along said north right-of-way line to the east right-of-way line of Annie Avenue and the northernmost southeast corner of said Lot 1; thence north along the east line of said Addition, 179.68 feet to the south line of said Addition; thence east along said south line, 130.04 feet to the west line of said Addition; thence south along said west line and the west line of Schulte Country Storage Addition to the southwest corner of said Addition; thence east along the south line of said Addition, to the westernmost southeast corner of said Addition and the northwest corner of Schulte Country Store Addition; thence south along the west line of said Addition to the southwest corner of said Addition; thence northerly and easterly along the south line of said Addition and the south line of Lot 1, St. Peter The Apostle Catholic Church Addition to the southernmost southeast corner of said Addition; thence north along the east line of said Addition to the south line of Lot 1, Block A, St Peter the Apostle Catholic Church 2nd Addition; thence east along said south line and the south line of Harvest Ridge Addition, to the southeast corner of Lot 30, Block C, Harvest Ridge Addition; thence south along the west line of said Addition and said line extended to the north right-of-way line of K-42 Highway; thence northerly and easterly along said north right-of-way line to the point of beginning; EXCEPT that part described as follows: Beginning at the most southerly southeast corner of Lot 1, St Peter the Apostle Catholic Church Addition said corner also being the southeast corner of Lot 1, Block A, Schulte Country Store Addition; thence northerly along the line common to said St. Peter The Apostle Catholic Church Addition and Schulte Country Store Addition, 95.51 feet, more or less, to a point 68.31 feet south of northeast corner of Schulte Country Store Addition, thence southeasterly, 80.79 feet to a point on the south line of said St. Peter the Apostle Catholic Church Addition; thence southwesterly along the south line of said St. Peter the Apostle Catholic Church, being a curve to the left, having a central angle of 00°09'07" and a radius of 19158.61 feet, an arc distance of 50.84 feet, to the point of beginning.

And Also:

A tract of land in the Northeast Quarter of Section 17, Township 28 South, Range 1 West of the 6th P.M., described as: Eliot Second Addition, Wichita, Sedgwick County Kansas.

Tracts of land in Sections 14 and 15, Township 28 South, Range 1 West of the 6th P. M., Sedgwick County, Kansas described as: Beginning at a point on the south right-of-way line of MacArthur Road and the west right-of-way line of Hoover Road thence westerly along said south right-of-way line to the west line of the east half of said Northeast Quarter; thence south along said west line to the south line of said Northeast Quarter; thence east along said south line to a point 1273.00 feet west of the east line of the Southeast Quarter of said Section 15; thence southeasterly with a deflection angle to the right of 45°00'08", 237.00 feet; thence southeasterly with a deflection angle to the left of 12°14'30", 533.00 feet; thence southeasterly with a deflection angle to the right of 12°58'00", 315.00 feet; thence southeasterly with a deflection angle to the right of 22°30'00", 595.00 feet; thence southeasterly with a deflection angle to the left of 06°01'00", to the west right-of-way line of Hoover Road; thence south along said west right-of-way line to the north right-of-way line of 47th Street South; thence east along said north right-of-way line to the westerly right-of-way line of the Wichita-Valley Center Flood Control (Condemnation Case A-30410); thence northwesterly along said westerly line to the north line of the Southwest Quarter of said Section 14; thence west along said north line and said line extended to a point 667.87 feet west of the east line of the Southeast Quarter of said Section 15; thence north parallel with said east line of said Section 15 a distance of 521.77 feet to the south line

of Wheatland Addition, Sedgwick County, Kansas; thence east along said south line of said Addition and said south line extended to the east right-of-way line of Hoover Road; thence north along said east right-of-way line to a point 360 feet south of the north line of the Northwest Quarter of said Section 14; thence west parallel with said north line and said north line extended to the west right-of-way line of Hoover Road; thence north along said west right-of-way line to beginning.

And Also:

A tract of land in the Northeast Quarter of Section 14, Township 28 South, Range 1 West of the 6th P.M., described as:

Beginning at the intersection of the west right-of-way line of West Street and the south line of said Northeast Quarter; thence west along said south line to the east line of the Missouri Pacific Railroad right-of-way; thence north along said east right-of-way line 642.44 feet; thence east parallel to the south line of said Northeast Quarter to the west right-of-way line of West Street; thence south along said west right-of-way line to beginning.

And Also:

The west 130 feet of the following described tract: Beginning at a point 180 feet West of the Northeast Corner of the Northwest Quarter of Section 24, Township 28 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas; thence west along the north line of said Northwest Quarter, 510 feet; thence south parallel with the east line of said Northwest Quarter, 420 feet; thence northeasterly 563.8 feet, more or less, to a point 180 feet west and 180 feet south of the northeast corner of said Northwest Quarter; thence north 180 feet to the point of beginning, EXCEPT for that part designated as 47th Street South right-of-way.

And Also:

A tract of land in the Southwest Quarter of Section 24, Township 28 South, Range 1 West of the 6th P.M. described as:

Lots 1, 2, 3 and 4, Deer Creek Estates Second Addition, Sedgwick County, Kansas

And Also:

A tract of land in the Northwest Quarter of Section 19, Township 28 South, Range 1 East of the 6th P. M., Sedgwick County, Kansas described as: Commencing at the northwest corner of said Northwest Quarter; thence S00°E along the west line of said Northwest Quarter 1139 feet for a place of beginning; thence continuing S00°E, 258.26 feet; thence N89°48'30"E, 683.76 feet; thence N00°E, 175 feet; thence N44°09'W, 132.99 feet; thence S88°36'W, 591.3 feet to the point of beginning, EXCEPT for that part designated as Meridian Avenue right-of-way.

And Also:

A tract of land in Section 11, Township 28 South, Range 1 East of the 6th P.M. described as:

Lot 1, Block A, Dunnegan Industrial Addition, Wichita, Sedgwick County, Kansas

And Also:

Tracts of land in the Southwest Quarter of Section 26, the Southeast Quarter of Section 27, the Northeast Quarter of Section 34 and the Northwest Quarter of Section 35, all of Township 28 South, Range 1 East of the Sixth Principal Meridian, described as; All of Lots 4 and 5, Block B, TOGETHER WITH all of Lots 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15, Block C, TOGETHER WITH all of Lots 6, 7, 8, 9, 10, and 11, Block E, TOGETHER with all of Lots 1, 2, 3, 4, and 5, Block F, all in Woodvale Addition, Sedgwick County, Kansas, TOGETHER WITH that part of Lot 3 in said Block B, and that part of Lots 3, 16, and 17 in said Block C, and that part of Lots 7, 8, and 9 in said Block D, and that part of Holyoke Ave., Clifton Ave., and 62nd St. So. as dedicated in said Woodvale Addition lying south of the following described line: Commencing at the SW corner of the SW ¼ of Sec. 26, Twp. 28-S, R-1-E of the 6th P.M., Sedgwick County, Kansas, said SW corner also being the SW corner of said Woodvale Addition; thence northerly along the west line of said SW ¼, and along the west line of said Woodvale Addition, 742.59 feet to the intersection with the south line of Right-of-Way Agreement, (Film 215, Page 1009), and for a point of beginning; thence easterly with a deflection angle to the right of 92°47'39", 310.00 feet; thence easterly with a deflection angle to the left of 02°46'24", 1006.62 feet to a point on the east line of the SW ¼ of said SW ¼, and on the east line of said Woodvale Addition, said point being 721.69 feet north of the SE corner of the SW ¼ of said SW ¼, said SE corner also being the SE corner of said Woodvale Addition, and there ending, TOGETHER with all of Myrtle Drive as dedicated in said Woodvale Addition, TOGETHER WITH all of Vassar Avenue as dedicated in said Woodvale

Addition, TOGETHER WITH that part of Government Lot 1 in the NE ¼ of Sec. 34, Twp. 28-S, R-1-E of the 6th P.M., Sedgwick County, Kansas and that part of Government Lot 4 in the SE ¼ of Sec. 27, Twp. 28-S, R-1-E of the 6th P.M., Sedgwick County, Kansas lying northeasterly of the following described line: Commencing at the NE corner of said Government Lot 1; thence S01°09'09"E along the east line of said Government Lot 1, 795.57 feet to the mean high bank of the Arkansas River, and for a point of beginning; thence N51°09'09"W along said mean high bank, 200.00 feet; thence N33°51'09"W along said mean high bank, 148.00 feet; thence N68°04'58"W, 305.07 feet; thence N28°53'28"W along said mean high bank, 133.00 feet; thence N41°53'28"W along said mean high bank, 193.00 feet; thence N48°53'28"W along said mean high bank, 413.00 feet; thence N50°59'28"W along said mean high bank, 393.75 feet; thence N41°22'41"W along said mean high bank, 186.35 feet; thence N32°44'07"W along said mean high bank, 222.86 feet to a point on the south right-of-way line of Right-of-Way Agreement, (Film 215, Page 1009), and there ending, and lying south of that part of said Right-of-Way Agreement, (Film 215, Page 1009), described as follows: Commencing at the SE corner of said Government Lot 4; thence northerly along the east line of said Government Lot 4, 742.59 feet for a point of beginning; thence west with a deflection angle to the left of 89°58'45" a distance of 1006.10 feet; thence south 15.00 feet along a deflection angle to the left of 90°00'00"; thence west 300.00 feet along a deflection angle to the right of 90°00'00"; thence south 25.00 feet along a deflection angle to the left of 90°00'00" to a point, which point is 1306.10 feet west and 40.00 feet south of the point of beginning; thence west 335.00 feet, more or less, along a deflection angle to the right of 90°00'00", to a point on the east established bank line of the Big Arkansas River, and there ending, TOGETHER with the west 20.00 feet of Right-of-Way Agreement, (Film 242, Page 464), lying in Government Lot 2 in the NW ¼ of Sec. 35, Twp. 28-S, R-1-E of the 6th P.M., Sedgwick County, Kansas, and TOGETHER WITH the west 20.00 feet of the south 275.93 feet of the north 335.93 feet of said Government Lot 2, EXCEPT for that part designated 63rd Street South.

And Also:

Tracts of land located in Sections 26 and 27, Township 28 South, Range 1 East of the 6th P.M. described as: The south 1082.30 feet of the northwest quarter of the Southwest Quarter of said Section 26, EXCEPT that part designated as Clifton Avenue right-of-way TOGETHER WITH the south 1082.30 feet of Government Lot 3 located in the Southeast Quarter of said Section 27.

And Also:

Tracts of land in Sections 22, 23, 26 and 27, Township 28 South, Range 1 East of the 6th P.M., described as follows: Beginning at the southeast corner of the southwest quarter of the Southwest Quarter of said Section 23; thence north along the east line of the southwest quarter of the Southwest Quarter of said Section, to a point 1314.48 feet south of the north line of the Southwest Quarter of said Section; thence west parallel to said north line, to the west right-of-way line of Clifton Street; thence north along said west right-of-way line to a point on the north line of Reserve "G", Meadowlake Beach Addition, Wichita, Sedgwick County, Kansas; thence S79°41'19"W along the north line of said Reserve "G" to a point 174.43 feet west of the east line of Lot 1, Pinaire Mobile Home Park to Sedgwick County, Kansas; thence N30°00'23"W, 35.00 feet; thence S59°59'37"W, 1154.85 feet to a point 225.61 feet north of the south line of said Lot 1; thence S89°59'54"W parallel with the south line of said Lot 1, 570.00 feet to a point on the west line of said Lot 1; thence S00°00'06"E, 225.61 feet to the southwest corner of said Lot 1, said point being on the north line of Government Lot 4, located in the Southeast Quarter of said Section 22; thence west along said north lot line to the east bank of the Arkansas River; thence south along said east bank to the intersection of said east bank and the centerline of a ditch, said point also being 830 feet south of the north line of Government Lot 2 in the Northeast Quarter of said Section 27; thence northeasterly along said ditch centerline to a point located 58.5 feet south of the north line of the southwest quarter of the Northwest Quarter of said Section 26 and 568 feet east of the west line of said southwest quarter of the Northwest Quarter; thence north along a line parallel to said west line to said north line; thence east along said north line to the west right-of-way line of Clifton Avenue; thence north along said west right-of-way line to the south right-of-way line of 55th Street; thence west along said south right-of-way line to the west line of the Northwest Quarter of said Section 26; thence south along said west line to a point located 200 feet south of the northwest corner of said Northwest Quarter; thence west along a line parallel to the north line of the Northeast Quarter of said Section 27 a distance of 765 feet; thence north along a line parallel to the east line of said Section 27 and said Section 22 a distance of 800 feet; thence east along a line parallel to the south line of said Section 22 a distance of 490 feet; thence south along a line parallel to the east line of said Section 22 a distance of 190 feet; thence east along a line parallel to the south line of said Section 22 a distance of 275 feet to the west line of the Southwest Quarter of said Section 23; thence south along said west line to the south line of the southwest quarter of the Southwest Quarter of said Section 23; thence east along said south line to the southeast corner of the southwest quarter of the Southwest Quarter of said Section 23 and point of beginning

And Also:

Tracts of land in the Southeast and Southwest Quarters of Section 23, Township 28 South, Range 1 East of the 6th P.M., described as: Beginning at the intersection of the north right-of-way line of 55th Street South and the west right-of-way line of the ATS&F Railroad, thence north along said west right-of-way line to the northeast corner of said Southwest Quarter; thence west along the north line of said Southwest Quarter to the east right-of-way line of Clifton Avenue; thence south along said east right-of-way line to the north right-of-way line of 55th Street South; thence east along said north right-of-way to the point of beginning.

And Also:

A tract of land in the Northwest Quarter of Section 8, Township 28 South, Range 2 East of the 6th P.M. described as:
Reserve B, Rocky Ford Industrial Park Addition, Sedgwick County, Kansas

And Also:

A tract of land in the Northwest Quarter of Section 8, Township 28 South, Range 2 East of the 6th P.M. described as:
Reserve C and Lot 7, Block A; both in Rocky Ford Industrial Park Addition, Sedgwick County, Kansas

And Also:

That part of the west half of the Northwest Quarter of Section 4, Township 28 South, Range 2 East of the 6th P.M., described as follows: Beginning at the northwest corner of said Northwest Quarter; thence east along the north line of said Northwest Quarter, 1328.70 feet to the northeast corner of the west half of said Northwest Quarter; thence south along the east line of the west half of said Northwest Quarter, 1476.34 feet; thence N81°07'31"W, 357.15 feet; thence N75°45'41"W, 304.16 feet; thence N83°53'08"W, 64.29 feet; thence N89°35'43"W, 612.88 feet to a point on the west line of said Northwest Quarter; thence north along the west line of said Northwest Quarter, 1333.53 feet to the point of beginning, EXCEPT that part designated as Webb Road (95th Street East) right-of-way, AND EXCEPT that part designated as Pawnee Avenue (23rd Street South) right-of-way.

And Also:

A tract of land described as:
The Northeast Quarter of Section 3, Township 28 South, Range 2 East of the 6th P.M., Sedgwick County, Kansas, EXCEPT that part designated as Pawnee Avenue (23rd Street South) right-of-way, AND EXCEPT that part designated as 127th Street East right-of-way.

And Also:

Tracts of land located in the Southwest Quarter of Section 36, Township 27 South, Range 2 East of the 6th P.M., described as commencing at the northwest corner of said Southwest Quarter; thence S89°48'32"E, along the north line of said Southwest Quarter, 40.00 feet for a place of beginning; thence continuing S89°48'32"E, along said north line, 1737.00 feet; thence S44°14'09"W, 322.00 feet; thence S11°01'16"W, 126.00 feet; thence S34°51'21"E, 155.00 feet; thence S41°53'26"W, 277.00 feet; thence N88°38'14"W, 70.00 feet; thence S40°39'47"W, 155.00 feet; thence S08°47'08"W, 287.00 feet; thence N85°43'21"W, 188.00 feet; thence S55°32'56"W, 206.00 feet; thence S06°13'33"W, 202.00 feet; thence S48°02'58"E, 120.00 feet; thence S39°58'11"W, 214.00 feet; thence S75°03'46"W, 358.00 feet; thence S42°11'12"W, 110.00 feet; thence N31°34'45"W, 110.00 feet; thence N70°03'54"W, 174.00 feet; thence N48°08'50"W, 143.00 feet to a point 40.00 feet East of the west line of said Southwest Quarter; thence N00°04'42"W, parallel with said west line, 1566.00 feet to the place of beginning.

And Also:

Tracts of land in Sections 23 and 24, Township 27 South, Range 2 East of the 6th P.M., described as:
Beginning at the intersection of the west right-of-way line of 159th Street East and the south right-of-way line of Central; thence south along said west right-of-way line to the north right-of-way line of U.S. Highway 54; thence west along said north right-of-way line to the east line of the Southwest Quarter of said Section 24; thence north to the north line of said Southwest Quarter; thence west to the east line of the west half of said Southwest Quarter; thence south to the north right-of-way line of U.S. Highway 54; thence west along said north right-of-way line to the

east right-of-way line of K-96 Highway; thence northerly and easterly along said east right-of-way line and the southeast right-of-way line of the K-96 Highway/Kansas Turnpike interchange to the east right-of-way line of 143rd Street East; thence south along said east right-of-way line to a point 1275.27 feet north of the south line of the Northwest Quarter of said Section 24, said point being the westernmost northwest corner of Lot 2, Block A, Clark Estates Addition; thence S89°49'00"E, 29.23 feet; thence northerly 412.65 feet along the west line of said Lot 2 to the north line of said Addition; thence east along said north line 151.93 feet to the east line of said Addition; thence southerly along said east line to the southeast corner of Lot 1, Block A of said Addition and the north line of Shadybrook Meadow Addition; thence easterly 67.59 feet along said north line to the westernmost corner of Lot 3, Block A, of The Estates at Shadybrook; thence northerly and easterly along the west line of said Lot 3 and of Lots 4 and 5, Block A in said Addition to the northwest corner of said Lot 5; thence easterly 67.44 feet easterly along the north line of said Lot 5 to the southwest corner of Lot 5, Block 1, Scottsdale at Shadybrook Farm Addition; thence northeasterly along the west line of said Addition to the south right-of-way line of the Kansas Turnpike Authority; thence northeasterly along said south right-of-way line to the south right-of-way line of Central Avenue; thence east along said south right-of-way line to the point of beginning.

And Also:

Tracts of land in the Southeast Quarter of Section 13, Township 27 South, Range 2 East of the 6th P.M., described as:

Beginning at the intersection of the north right-of-way line of Central Avenue and the west line of said Southeast Quarter; thence north along said west line of said Southeast Quarter to the south right-of-way line of the Kansas Turnpike Authority; thence northeasterly along said south right-of-way line to the west right-of-way line of 159th Street East; thence south along said west right-of-way line to the north right-of-way line of Central Avenue; thence west along said north right-of-way line to beginning.

And Also:

Tracts of land in Section 26, Township 29 South, Range 4 West of the 6th P. M., Sedgwick County, Kansas described as: All of said Section EXCEPT the east 1396 feet of the south 537 feet AND EXCEPT for that part designated as perimeter road rights of way.

And Also: Tracts of land described as:

Lot 1, Block 1, The Broad Street Addition to Sedgwick County, Kansas TOGETHER WITH a tract of land in the Northeast Quarter of Section 14, Township 28 South, Range 1 West of the 6th P.M. described as follows: that part of said Northeast Quarter lying west of the Missouri Pacific Railroad right-of-way (as established in Deed Book 964, Page 39 and Deed Book 1230, Page 340), EXCEPT the north 933.00 feet thereof; EXCEPT that part platted as The Broad Street Addition; AND EXCEPT that part taken for the Wichita-Valley Center Floodway Condemned by Case A-30410, AND TOGETHER WITH that part of the west half of the Southeast Quarter of Section 14, Township 28 South, Range 1 West of the 6th P.M. lying east of the Wichita-Valley Center Flood Control right-of-way per Condemnation Case A-30410 and west of the Missouri Pacific Railroad right-of-way as established by the deed filed in Book 1230, Page 344, TOGETHER with that part of the east half of the Southeast Quarter of Section 14, Township 28 South, Range 1 West of the 6th P.M. lying west of the Missouri Pacific Railroad right-of-way as established by deed filed in Book Misc. 1230, Page 342.

And Also:

Tracts of land described as: The south 1000.00 feet of the west 1366.80 feet of the north half of the Southwest Quarter of Section 34, Township 26 South, Range 2 East of the 6th P.M EXCEPT for that part designated as Greenwich Road right-of-way.

SECTION 2. That the following blocks, parcels, pieces and tracts of land be and they are hereby excluded from the corporate limits of the City of Wichita, even though completely surrounded by the territory of the City of Wichita, and nothing herein shall otherwise be construed as incorporating or including such blocks, parcels, pieces and tracts of land within the City limits, such lands being described as follows:

(a) Beginning at the intersection of the north line of Kellogg Street right-of-way and the Center Line of Woodlawn Boulevard; thence north along said Center Line to the Center Line of Douglas Avenue; thence west along said Center Line to the west line of Woodlawn Heights Addition; thence north along said west line a distance of six hundred fifty-five (655) feet; thence east three hundred seventy-seven (377) feet; thence north six hundred sixty-five

(655) feet more or less, to the north line of the south half of the Northeast Quarter of Section 24, Township 27 South, Range 1 East of the 6th P.M.; thence east along said north line and the south line of Cresthill Manor Addition to the east line of the west half of Section 19, Township 27 South, Range 2 East of the 6th P.M.; thence south along said east line to the south line of Block U, Eastborough 3rd Addition; thence west to the east line of Block DZ, in said Addition, extended from the south; thence south along said east line and the east line of Block EZ, in said Addition, to the north right-of-way line of Kellogg Street; thence west along said north right-of-way line to the point of beginning.

(b) Tracts of land in Section 28, Township 27 South, Range 2 East of the 6th P.M. described as: Beginning at a point on the west right-of-way line of Greenwich Road, said point being 270 feet north of the south line of the Northeast Quarter of said Section 28; thence south along said west right-of-way line to the north line of the south half of the north half of the southeast quarter of the Southeast Quarter of said Section; thence west parallel to said south line to the west line of the southeast quarter of the Southeast Quarter of said Section; thence north along said west line to the north line of the southwest quarter of the Southeast Quarter of said Section 28; thence west along said north line to the west line of the Southeast Quarter of said Section 28; thence north along said west line to the south line of the Northeast Quarter of said Section 28; thence east along said south line to a point 1948 feet west of the east line of said Northeast Quarter; thence north parallel to said east line 270 feet; thence east parallel to the south line of said Northeast Quarter to point of beginning.

(c) A tract of land in the Southwest Quarter of Section 27, Township 27 South, Range 2 East of the 6th P.M. described as: Beginning at the intersection of the east right-of-way line of Greenwich Road and the north right-of-way line of Harry Street; thence north along said east right-of-way line to the north line of the south half of said Southwest Quarter; thence east along said north line to the east line of said Southwest Quarter; thence south along said east line to the north right-of-way line of Harry Street; thence west along said north right-of-way line to the point of beginning.

(d) A tract of land located in the Southeast Quarter of Section 28, Township 27 South, Range 2 East of the 6th P.M. described as: The southeast quarter of the southeast quarter of said Southeast Quarter of Section 28, EXCEPT for the east 600 feet of the south 600 feet thereof, AND EXCEPT that part designated as Harry Street right-of-way, AND EXCEPT that part designated as Greenwich Road right-of-way.

(e) A tract of land located in the Southwest Quarter of Section 33, Township 27 South, Range 2 East of the 6th P.M., Sedgwick County, Kansas described as:
Lot 1, Block 1 Sedgwick County East Yard Addition, Sedgwick County, Kansas.

(f) The south half of the northeast quarter of the Southeast Quarter of Section 34, Township 27 South, Range 2 East of the 6th P.M., Sedgwick County, Kansas, EXCEPT that part designated as 127th Street East.

(g) Beginning at the south line of Douglas right-of-way and the west line of 127th Street East right-of-way; thence south along said west right-of-way line to the north right-of-way line of U.S. Highway 54; thence west along said north right-of-way line to a point 726 feet east of the west line of the Southeast Quarter of Section 22, Township 27 South, Range 2 East of the 6th P.M.; thence north parallel to said west line to a point 1320 feet north of the south line of said Southeast Quarter; thence west parallel to said south line to the west line of said Southeast Quarter; thence north to the south right-of-way line of Douglas; thence east along said south right-of-way line to the point of beginning.

(h) A tract of land in Sections 9, 16 and 21, Township 27 South, Range 2 East of the 6th P.M. described as: Beginning at the intersection of the south right-of-way line of 13th Street North, and the east right-of-way line of Webb Road.; thence east along said south right-of-way line to a point 272.31 feet east of the west line of said Northwest Quarter; thence north parallel to said west line to the south line of the Southeast Quarter of said Section 9; thence east along said south line to the west line of the east half of said Southeast Quarter; thence north along said west line to the right-of-way line of 13th Street North; thence east along said north right-of-way line to a point 585 feet west of the east line of said Southeast Quarter; thence south parallel to said east line and said line extended to the south right-of-way line of 13th Street North; thence west along said south line to a point 642.45 feet west of the east line of the Northeast Quarter of Section 16, Township 27 South, Range 2 East of the 6th P.M.; thence S00°32'23"E, 260.01 feet; thence N88°53'55"E, 334.80 feet; thence S01°03'27"E, 1834.80 feet; thence bearing N88°53'55"E to the west right-of-way line of Greenwich Road; thence south along said west right-of-way line to a

point 613.23 feet north of the south line of the Southeast Quarter of Section 16, Township 27 South, Range 2 East of the 6th P.M. ; thence west parallel to said south line to a point 485 feet west of the east line of said Southeast Quarter; thence south parallel to said east line and said line extended to the south right-of-way line of Central Avenue; thence east along said south line to the west right-of-way line of Greenwich Road; thence south along said west line to the north line of the southeast quarter of the Southeast Quarter of Section 21, Township 27 South, Range 2 East of the 6th P.M.; thence west along said north line to the west line of the southeast quarter of said Southeast Quarter; thence south along said west line to the north right-of-way line of U.S. Highway 54; thence west along said north line to the east right-of-way line of Webb Road; thence north along said east line to the south right-of-way line of Central Avenue; thence easterly along said south line to the east right-of-way line of Elder, thence north along said east line to the center line of Chamberlin; thence west along said center line to the east lines of Lots 45, 57 and 58, Block 2, Lynch Addition to Travel Air City extended; thence north along said east lines to the north line of Lot 58, Block 2, of said Addition; thence west along said north line to the east right-of-way line of Beech Road; thence north along said east line to a point 91 feet south of the north line of the Southwest Quarter of Section 16, Township 27 South, Range 2 East of the 6th P.M.; thence west to the east line of the East Side Development Addition; thence north along said east line to the north line of said Addition; thence west along said north line to the east right-of-way line of Webb Road; thence north along said east line to beginning.

(i) A tract of land in Sections 9, 10, and 15, Township 27 South, Range 2 East of the 6th P.M. described as: Beginning at the southwest corner of the northeast quarter of the Southeast Quarter of said Section 9; thence north along the west line of the northeast quarter of said Southeast Quarter to a point located 423.11 feet south of the north line of said Southeast Quarter; thence east along a line parallel to said north line to the west right-of-way line of Greenwich Road; thence north along said west right-of-way line to the south line of the Northeast Quarter of said Section 9; thence east along said south line and the south line of the Northwest Quarter of said Section 10 to the east right-of-way line of Greenwich Road; thence north along said east right-of-way line to a point 1312 feet south of the north line of the Northwest Quarter of said Section 10; thence east to a point 998 feet east of the west line of said Northwest Quarter; thence south parallel to said west line, 610 feet; thence east parallel to said north line to a point on the west right-of-way line of K-96 Highway, 1228.98 feet, more or less; thence northerly along said west right-of-way line to the south right-of-way line of 21st Street North; thence east along said south right-of-way line to the east right-of-way line of K-96 Highway; thence southerly along said east right-of-way line to the west line of the east half of said Section 10; thence south along said west line and the west line of the Northeast Quarter of said Section 15 to the westerly right-of-way line of K-96 Highway; thence northerly along said west right-of-way line to the south line of the Burlington Northern Railroad right-of-way; thence west along said south right-of-way line a distance of 894.72 feet; thence south to a point 755.95 feet north and 1320 feet east of the southwest corner of the Southwest Quarter of said Section 10, said point being located on the north line of Dillon 12th Addition to Sedgwick County, Kansas; thence west along said north line and said north line extended to the west right-of-way line of Greenwich Road; thence north along said west right-of-way line to the north line of the south half of the Southeast Quarter of said Section 9, thence west along said north line to the west line of the east half of said Southeast Quarter to point of beginning.

(j) The southwest quarter of the Northeast Quarter of Section 34, Township 26 South, Range 1 East of the 6th P.M., EXCEPT for the south 660 feet of the east 330 feet of said southwest quarter of the Northeast Quarter.

(k) A tract of land in the Northeast Quarter of Section 30, Township 26 South, Range 1 East of the 6th P.M. described as: That part of said Northeast Quarter lying south of South Harbor Addition and west of KPTS Addition and USD 259 Addition.

(l) That part of K-96 Highway in the Southeast Quarter of Section 15, Township 27 South, Range 2 East of the 6th P.M. lying west of 127th Street East.

(m) A tract of land located in the Southeast Quarter of Section 34, Township 26 South, Range 1 West of the 6th P.M. described as:

Beginning at the intersection of the north right-of-way line of 29th Street North and the west line of said Southeast Quarter; thence north along said west line to the north line of the south half of said Southeast Quarter; thence east along said north line to a point 1145 feet west of the east line of said Southeast Quarter; thence south parallel to said east line to the north right-of-way line of 29th Street North; thence west along said north right-of-way line to beginning.

(n) A tract of land located in the North Half of Section 33, Township 26 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas described as:

Beginning at the intersection of the south right-of-way line of 37th Street North and the west right-of-way line of the Kansas Southwestern Railroad; thence east along said south right-of-way line to a point 360 feet west of the east line of the west half of the Northeast Quarter of said Section 33, thence southerly perpendicular to the north line of said Northeast Quarter, 95 feet; thence S55°55'48"E, 30.01 feet; thence east parallel with the north line of said Northeast Quarter, 79.12 feet; thence N75°26'48"E, 16.46 feet; thence east parallel with the north line of said Northeast Quarter, 22.67 feet; thence S44°12'31"E, 45.52 feet; thence southeasterly, 350.27 feet, more or less, to a point on the east line of the West half of said Northeast Quarter, said point being 440 feet south of the northeast corner of the west half of said Northeast Quarter; thence south along said east line to the south line of the north half of said Section 33, thence west along said south line to the west right-of-way line of the Kansas Southwestern Railroad; thence northerly and westerly along said west right-of-way line to the south right-of-way line of 37th Street North and point of beginning.

(o) A tract of land located in the Northwest Quarter of Section 4, Township 27 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas described as: Beginning at the intersection of the east line of said Northwest Quarter and the south right-of-way line of 29th Street North; thence south along said east line to a point 600 feet south of the north line of said Northwest Quarter; thence west 150 feet to a point 600 feet south of said north line; thence north parallel with the east line of said Northwest Quarter a distance of 450 feet; thence west 435 feet to a point 150 feet south of the north line of said Northwest Quarter; thence north parallel with the east line of said Northwest Quarter to the south right-of-way line of 29th Street North; thence east along said south right-of-way line to beginning.

(p) Tracts of land located in the north half of Section 15, the south half of Section 3, the west half of Section 11 and Section 10, all of Township 27 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas described as: Beginning at the intersection of the south right-of-way line of 21st Street North and the north line of the Missouri Pacific Railroad right-of-way; thence southeasterly along said north line to the west right-of-way line of Interstate Highway 235; thence southerly and southwesterly along said west line to the south right-of-way line of 13th Street, extended from the west; thence west along said south line and said line extended to the east line of County Acres Fourth "B" Addition; thence northerly along said east line and said east line extended to the north right-of-way line of 13th Street North; thence west along said north line to the east right-of-way line of Ridge Road; thence north along said east line to the north right-of-way line of 21st Street North; thence east along said north line to the north line of the Missouri Pacific Railroad; thence southeasterly to the point of beginning.

(q) A tract of land in the Northwest Quarter of Section 29, Township 27 South, Range 1 West of the 6th P.M., described as follows: Beginning at a point on the south line of said Northwest Quarter, said point being one thousand six hundred sixty-five (1665) feet west of the southeast corner of said Northwest Quarter; thence northeasterly for a distance of one hundred seventy-three and thirty hundredths (173.30) feet; thence northeasterly with a deflection to the left of zero degrees four minutes (000°4') for a distance of three hundred fifty-three and eighty-one hundredths (353.81) feet; thence northeasterly with a deflection to the left of one degree thirty-one minutes (013°1') for a distance of four hundred forty-three and ninety-four hundredths (443.94) feet; thence northeasterly with a deflection to the left of thirty-six degrees twenty-seven minutes (362°7') for a distance a three hundred thirty-seven and two hundredths (337.02) feet; thence northwesterly with a deflection to the left of forty-two degrees forty-one minutes (42°41') for a distance of one hundred fourteen (114) feet, more or less, to the southerly line of Oatman Addition to Sedgwick County, Kansas; thence northwesterly along the east line of Oatman Addition to the northerly line of said Addition; thence northeasterly with a deflection to the right of fifty-seven degrees forty-six minutes (57°46') for a distance of 290.95 feet, thence northeasterly with a deflection to the right of twenty-two degrees forty-four minutes (22°44') for a distance of four hundred sixty-two and twenty-four hundredths (462.24) feet; thence with a deflection to the left of nineteen degrees forty-eight minutes (19°48') for a distance of 264 feet more or less to the south line of Maple Street; thence east along said south line to the east line of said Northwest Quarter Section; thence south along said east line to the south line of said Quarter Section; thence west along said south line to the point of beginning.

(r) Tracts of land in the Southwest Quarter of Section 30, Township 27 South, Range 1 West described as: Beginning at the northeast corner of the Southwest Quarter of Section 30, Township 27 South, Range 1 West; thence south along the east line of said Southwest Quarter to the north line of Brady Addition; thence west along said north line to the west line of said Addition; thence south along said west line to a point 338 feet north of the north right-of-way line of U.S. Highway 54 as condemned in Case No. A-38302; thence west along a line parallel with said north

right-of-way line for a distance of 284 feet; thence north along a line parallel to the east line of said Southwest Quarter to a point 514.21 feet south of the north line of said Southwest Quarter; thence east parallel to said north line 482.37 feet; thence north parallel to the east line of said Southwest Quarter 260 feet; thence west parallel to the north line of said Southwest Quarter 482.37 feet; thence north parallel to the east line of said Southwest Quarter to the north line of said Quarter; thence east along said north line to the point of beginning.

(s) A tract of land in the Southeast Quarter of Section 13, Township 28 South, Range 1 West of the 6th P.M. described as:

Beginning at a point on the west right-of-way line of Meridian Avenue 731.51 feet north of the south line of said Section; thence west parallel to said south line to a point 1270.5 feet west of the east line of said Section; thence south parallel to the east line of said Section 240 feet; thence east parallel to the south line of said Section to the west right-of-way line of Meridian Avenue; thence north to beginning.

(t) Tracts of land in the Northeast Quarter of Section 24, Township 28 South, Range 1 West of the 6th P.M. and the Northwest Quarter of Section 19, Township 28 South, Range 1 East of the 6th P.M. described as: Beginning at the intersection of the west right-of-way line of Meridian Avenue and the south right-of-way line of 47th Street South; thence south along said west line to the south lines of said Northeast and Northwest Quarters; thence east along said south lines to the east line of the west half of said Northwest Quarter of Section 19; thence north to the south right-of-way line of 47th Street South; thence west along said south line to point of beginning, EXCEPT that part of the Northwest Quarter of said Section 19, described as follows: Commencing at the Northwest corner of said Northwest Quarter, thence S00°E along the west line of said NW ¼ 1139 feet for a place of beginning; thence continuing S00°E, 258.26 feet; thence N89°48'30E, 683.76 feet; thence N00°E, 175 feet; thence N44°09'W, 132.99 feet; thence S88°36'W, 591.3 feet to the place of beginning, except for that part designated as Meridian Avenue.

(u) A tract of land in Southeast Quarter of Section 12, Township 28 South, Range 1 West of the 6th P.M. described as: Beginning at a point on the east right-of-way line of West Street, said point being located on the south line of Phat An Temple Addition; thence east along said south line, to the east line of said Addition; thence north along said east line and the east line of Erin Springs Addition, to the north line of said addition; thence west along said north line and the north line of Lucas Springs Addition, to the east right-of-way line of West Street; thence south along said east right-of-way line, to point of beginning.

(v) A tract of land in the Northwest Quarter of Section 19, Township 28 South, Range 1 East of the 6th P.M. described as: Beginning at the intersection of the east line of said Northwest Quarter and the south right-of-way line of Meridian Avenue; thence south along said east line 1775 feet; thence west parallel to the north line of said Northwest Quarter 40 feet; thence north parallel to the east line of said Northwest Quarter to the south right-of-way line of Meridian Avenue; thence east to beginning.

(w) A tract of land in Southeast Quarter of Section 12, Township 28 South, Range 1 West of the 6th P.M. described as: Beginning at a point on the east right-of-way line of West Street, said point being located 992.15 feet south, more or less, of the north line said Southeast Quarter; thence east along a line parallel to said north line, to a point 298.71 feet east of the west line of said Southwest Quarter and the southernmost southeast corner of Trimmel Addition; thence north along the east line of said Addition, 60 feet to the south line of said Addition; thence east along said south line, 26.29 feet; thence south 504.98 feet along a line parallel to the west line of said Southwest Quarter; thence west along a line parallel to the north line of said Southwest Quarter to the east right-of-way line of West Street; thence north along said east right-of-way line, to the point of beginning.

(x) A tract of land in the Southeast Quarter of Section 3, Township 27 South, Range 2 East of the 6th P.M. described as: Beginning at a point on the west right-of-way line of 127th Street East, said point being 744.45 feet south of the north line of said Southeast Quarter; thence west parallel to said north line 228.72 feet; thence north parallel to the east line of said Southeast Quarter 208.72 feet; thence east parallel to the north line of said Southeast Quarter 228.72 feet to the west right-of-way line of 127th Street East; thence south along said west right-of-way line to beginning.

(y) A tract of land in the Southeast Quarter of Section 31, Township 26 South, Range 1 West of the 6th P.M. described as: Beginning 802.39 feet north and 1172.96 feet west of the southeast corner of said Southeast Quarter; thence north 75 feet; thence west 85 feet; thence south 75 feet; thence east 85 feet to beginning.

(z) A tract of land in the Southwest Quarter of Section 32, Township 26 South, Range 2 West of the 6th P.M. described as: Beginning at a point on the east right-of-way line of Maize Road located 501.06 feet, more or less, south of the north line of the south half of said Southwest Quarter; thence east parallel to said north line 519.44 feet; thence northwesterly 54.11 feet; thence east parallel with said north line 122.59 feet; thence north parallel with the west line of said Southwest Quarter to the north line of the south half of said Southwest Quarter; thence east parallel to the north line of said Southwest Quarter to a point on the west line of Reserve "G", Fox Ridge Addition; thence south along said west line to a point 626.16 feet north of the south line of said Southwest Quarter; thence west to a point 140 feet west of the west line of the southeast quarter of said Southwest Quarter; thence south parallel to said west line to the north right-of-way line of 29th Street North; thence west along said north right-of-way to the east right-of-way line of Maize Road; thence north along said east right-of-way line to the point of beginning.

(aa) A tract of land in the Northwest Quarter of Section 5, Township 27 South, Range 1 West of the 6th P.M. described as: Beginning at the intersection of east right-of-way line of Maize Road and the south right-of-way line of 29th Street North, thence east along said south right-of-way line to the east line of said Northwest Quarter; thence south along said east line to the south line of Government Lot 3 ; thence west along said south line and said south line extended to the east right-of-way line of Maize Road; thence north along said east right-of-way line to the point of beginning.

(bb) A tract of land in Section 3, Township 27 South, Range 2 East of the 6th P.M. described as: Beginning at the intersection of the east right-of-way line of Greenwich Road and the south line of the north half of the north half of said Section, thence east along said south line to the east line of the west half of said Section, thence south along said east line to the east right-of-way line of K-96 Highway; thence southerly along said east right-of-way line to the north right-of-way line of 21st Street North; thence west along said north right-of-way line to the west right-of-way line of K-96 Highway; thence northerly and westerly along said west right-of-way line to the east right-of-way line of Greenwich Road, thence north along said east right-of-way line to the point of beginning.

(cc) A tract of land described as that part of K-254 Highway lying in the Southeast Quarter of Section 22, Township 26 South, Range 1 East of the 6th P.M.

(dd) A tract of land in the East Half of Section 27, Township 26 South, Range 1 East of the 6th P.M. described as: Beginning at the intersection of the west right-of-way of Hillside Avenue and the west right-of-way line of the Union Pacific Railroad, thence south along said west right-of-way line of Hillside Avenue to the east right-of-way line of the Union Pacific Railroad; thence southwesterly along said east right-of-way line to the north right-of-way line of 37th Street North; thence west along said north right-of-way line to the east line of the Southwest Quarter of said Section, thence north along said east line and said east line extended north to the south line of the north half of the Northeast Quarter of said Section 27; thence easterly along said south line bearing North 89° 52' 48" East a distance of 2262.56 feet to a point on the northwest right-of-way line of the Rock Island Railroad; thence along said northwest right-of-way line bearing North 30° 19' 25" East a distance of 339.04 feet; thence North 59° 40' 35" West, a distance of 25 feet; thence North 30° 19' 25" East, a distance of 300 feet to a point on the west right-of-way line of Hillside Avenue.

(ee) A tract of land in the Northwest Quarter of Section 18, Township 26 South, Range 1 East of the 6th P.M. described as: Beginning at the intersection of the east right-of-way line of Meridian Avenue and the south line of the north half of said Northwest Quarter, thence east along said south line to the east line of said Northwest Quarter; thence south along said east line to the south line of said Northwest Quarter; thence west along said south line to a point 700 feet east of the west line of said Northwest Quarter; thence north parallel to said west line 130 feet; thence west parallel to said south line 200 feet; thence south parallel to said west line 130 feet to the south line of said Northwest Quarter; thence west along said south line 60 feet; thence north along a line parallel to said west line a distance of 230 feet; thence west parallel to said south line to the east right-of-way line of Meridian; thence north along said east line to the point of beginning

(ff) A tract of land in the Northwest Quarter of Section 13, Township 27 South, Range 2 West of the 6th P.M. described as: Beginning at the intersection of the east right-of-way line of 135th Street West and the south right-of-way line of 13th Street; thence east along said south right-of-way line to a point 430 feet east of the west line of said Northwest Quarter; thence south parallel with said west line to a point 531.30 feet south of the north line of said Northwest Quarter; thence west parallel with the north line of said Northwest Quarter to the east right-of-way line of 135th Street West; thence north along said east right-of-way line to the point of beginning.

(gg) A tract of land in the Northwest Quarter of Section 31, Township 27 South, Range 1 West of the 6th P.M. described as: Beginning at the intersection of the east right-of-way line of 119th Street West and the north line of said Northwest Quarter, thence east along said north line to a point 316 feet east of the west line of said Northwest Quarter; thence south along a line parallel to said west line a distance of 275.7 feet; thence west along a line parallel to said north line to the east right-of-way line of 119th Street West; thence north along said east right-of-way line to beginning.

(hh) A tract of land in the Northwest Quarter of Section 31, Township 27 South, Range 1 West of the 6th P.M. described as: Beginning at a point on the east right-of-way line of 119th Street West located 615 feet more or less south of the north line of said Northwest Quarter; thence east along a line parallel to the said north line a distance of 295 feet; thence south along a line parallel to the west line of said Northwest Quarter a distance of 495 feet; thence west along a line parallel to said north line to the east right-of-way line of 119th Street West; thence north along said east right-of-way line to the point of beginning.

(ii) A tract of land in the Southeast Quarter of Section 11, Township 28 South, Range 1 West of the 6th P.M. described as: Beginning at a point on the west right-of-way line of West Street, said point being located 335 feet south of the north line of said Southeast Quarter; thence west along a line parallel with said north line to a point 500 feet west of the east line of said Southwest Quarter; thence north along a line parallel with the said east line a distance of 300 feet; thence east along a line parallel to said north line to said west right-of-way line and point of beginning.

(jj) A tract of land in the Southwest Quarter of Section 26, Township 27 South, Range 2 East of the 6th P.M. described as: Beginning at the intersection of the north right-of-way line of Harry Street and the east right-of-way line of 127th Street East; thence north along said east right-of-line to the south line of the north half of said Southwest Quarter; thence east along said south line to a point located 778.5 feet east of the west line of said Southwest Quarter; thence south along a line parallel to said west line, a distance of 325.39 feet; thence S 87° 08' 11" E, a distance of 128.77 feet; thence S 38° 46' 30" E, a distance of 44.36 feet; thence S 11° 57' 15" W, a distance of 165.81 feet; thence S 21° 41' 53" E, a distance of 11.72 feet; thence S 47° 30' 57" W, a distance of 46.10 feet; thence S 29° 18' 56" W, a distance of 70.61 feet; thence S 31° 33' 22" W, a distance of 103.23 feet to a point 778.5 feet east of said west line; thence south along a line parallel to said west line, 568.70 feet; thence S 59° 27' 02" W, a distance of 42.87 feet, more or less, to a point on a line 778.5 feet east of said west line; thence S 39° 27' 02" W, a distance of 79 feet; thence S 30° 27' 02" W, a distance of 123 feet; thence S 0° 52' 58" E, a distance of 30 feet; thence S 30° 07' 02" W, a distance of 41 feet; thence S 0° 32' 58" E to the north right-of-way line of Harry Street; thence west along said north right-of-way line to the east right-of-way line of 127th Street East to the point of beginning.

(kk) A tract of land in the Southeast Quarter of Section 36, Township 27 South, Range 2 West of the 6th P.M. described as: Beginning at a point located 660 feet west and 660 feet north of the southeast corner of the Southeast Quarter, Section 36, Township 27 South, Range 2 West of the 6th P.M., thence east along a line parallel to the south line of said Southeast Quarter to the west right-of-way line of 119th Street West; thence south and southwesterly along said west right-of-way line to the north right-of-way line of Pawnee Avenue; thence southwesterly and west along said north right-of-way line to a point 660 feet west of the east line of said Southeast Quarter; thence north along a line parallel to said east line to point of beginning.

(ll) A tract of land in the Northeast Quarter of Section 6, Township 28 South, Range 1 West of the 6th P.M. described as: Beginning at the intersection of the south right-of-way line of Pawnee Avenue and the west right-of-way line of Maize Road, thence west along said south right-of-way line to a point 475 feet west of the east line of said Section; thence south along a line parallel to said east line to point 943 feet south of the north line of said Section; thence east along a line parallel to said north line to the west right-of-way of Maize Road; thence north along said west right-of-way line to point of beginning.

(mm) A tract of land described as: The east 208 feet of the north 208 feet of the south 1308 feet of the Northeast Quarter of Section 27, Township 26 South, Range 1 West of the 6th P.M., EXCEPT for that part designated as Hoover Road right-of-way.

(nn) A tract of land in the Northeast Quarter of Section 27, Township 26 South, Range 1 West of the 6th P.M. described as: The north 208 feet of the west 417.42 feet of Government Lot 1, EXCEPT for that part designated as 45th Street road right-of-way.

(oo) A tract of land in the Northwest Quarter of Section 23, Township 26 South, Range 1 East of the 6th P.M. described as: Beginning at a point located 890 feet south of the north line of said Section 23; thence east parallel with said north line to a point 890 feet south of said north line and 505 feet east of the west line of said Northwest Quarter; thence N 53°52'52" E, a distance of 359.16 feet; thence N 90°00'00" E, a distance of 200.00 feet; thence S 00°08'44" E, parallel with the east line of the West Half of said Northwest Quarter, a distance of 67.39 feet, more or less, to the approximate center line of a creek; thence following the approximate center line of said creek, S22°00'44"W, 47.92 feet; thence S16°02'04"W, 110.34 feet; thence S00°29'36"W, 84.54 feet; thence S09°57'36"W, 127.74 feet; thence S02°59'31"E, 145.34 feet; thence S16°06'19"W, 133.72 feet; thence S29°37'55"W, 120.21 feet; thence S54°33'50"W, 43.77 feet; thence S69°46'35"W, 53.87 feet; thence S61°36'54"W, 65.25 feet; thence S43°39'57"W, 79.48 feet; thence S30°03'00"W, 91.40 feet; thence S42°56'45"W, 87.09 feet to a point 530.00 feet east of the west line of said NW ¼; thence west to a point on said west line 1839.06 feet south of the north line of said Northwest Quarter; thence north along said west line to point of beginning, EXCEPT for that part designated as Hillside road right-of-way.

SECTION 3. That if any part or portion of this Resolution shall be held or determined to be illegal, ultra vires or void, the same shall not be held or construed to alter, change or annul any terms or provisions hereof which may be legal or lawful. And in the event this Resolution in its entirety shall be held to be ultra vires, illegal or void, then in such event, the boundaries and limits of said City shall be held to be those heretofore established by law.

ADOPTED in Wichita, Kansas, **this 15th day of December, 2009.**

ATTEST:

Carl Brewer, Mayor

Karen Sublett, City Clerk

(SEAL)

APPROVED AS TO FORM:

Gary Rebenstorf, Director of Law

**City of Wichita
City Council Meeting
December 15, 2009**

TO: Wichita Airport Authority

SUBJECT: Covenant of Purpose, Use and Ownership
Aviation Training School – Colonel James Jabara Airport

INITIATED BY: Department of Airports

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Approve the Covenant of Purpose, Use and Ownership.

Background: On April 11, 2006, the Wichita Airport Authority approved a U. S. Economic Development Administration grant application and receipt of funds in the amount of \$2,000,000 for the construction of an assessment and career development center (referred to as the “Gateway” building for the aviation and manufacturing training center) on Colonel James Jabara Airport. The Wichita Airport Authority and Sedgwick County were co-applicants for the grant, with the South Central Economic Development District (SCKEDD) responsible for the grant administration. The grant represents a portion of the funding for the Aviation Training School, with the remaining funds coming from Sedgwick County, City of Wichita, private sector, State of Kansas, and other Federal assistance.

Analysis: As part of the grant requirements, the grantees must sign a Covenant of Purpose, Use and Ownership, which has been jointly developed and reviewed by bond counsel, Sedgwick County counselor’s office and the EDA’s attorneys. Simply stated, approval of the document ascertains that the facility will not be leased, sold, mortgaged or used for purposes other than was initially presented, for a 20-year period, unless prior written approval is provided by the Assistant Secretary, Economic Development Administration. Further, the document includes a requirement to record the Covenant in the office of the Register of Deeds of Sedgwick County, Kansas so as constitute notice to all persons of any and all restrictions on the use of this project.

Financial Considerations: None.

Goal Impact: The Airport’s contribution to the economic vitality of Wichita is promoted through entering into agreements which facilitate intergovernmental cooperation and which result in educational benefits; thereby improving the quality of the workforce in this community.

Legal Considerations: The Covenant has been approved as to form by the Department of Law.

Recommendation/Action: It is recommended that the Wichita Airport Authority approve the Covenant of Purpose, Use and Ownership, and authorize the necessary signatures.

Attachment: Covenant of Purpose, Use and Ownership.

COVENANT OF PURPOSE, USE AND OWNERSHIP

This COVENANT OF PURPOSE, USE AND OWNERSHIP dated the _____ day of _____, 200__ by and between SEDGWICK COUNTY, KANSAS (the "County"), whose address is 525 North Main, Suite 823, Wichita, Kansas 67203, THE WICHITA AIRPORT AUTHORITY (the "Authority"), whose address is Wichita Mid-Continent Airport, 2173 Air Cargo Road, P.O. Box 9130, Wichita, Kansas 67277-0130, and SEDGWICK COUNTY PUBLIC BUILDING COMMISSION (the "PBC"), whose address is 525 North Main, Suite 823, Wichita, Kansas 67203; and the ECONOMIC DEVELOPMENT ADMINISTRATION, UNITED STATES OF AMERICA, whose address is Main Commerce Building, Washington, D. C. 20230 (hereinafter with its successors and assigns called "EDA"):

RECITALS:

WHEREAS, SEDGWICK COUNTY, KANSAS submitted an application in conjunction with THE WICHITA AIRPORT AUTHORITY, designated as EDA Project No. 05-79-04308, for financial assistance pursuant to the Public Works and Economic Development Act of 1965, As Amended ("PWEDA") Including the Comprehensive Amendments Made by the Economic Development Administration Re-authorization Act of 2004 (P.L. 108-373, 42 U.S.C. 3121 et seq.); and

WHEREAS, by Offer of Grant, dated September 20, 2006, EDA offered to the County and the Authority a grant in the amount of \$2,000,000 (hereinafter called "Grant Amount") to assist in financing the construction of an assessment and career development center as described in the Financial Assistance Award (hereinafter called "Project"); and

WHEREAS, the Financial Assistance Award was accepted by the County on October 12, 2006 and by the Authority on October 25, 2006, subject to certain terms and conditions, pursuant to which County and the Authority covenanted and agreed to comply with the applicable requirements of 13 Code of Federal Regulations, Part 314 (hereinafter called "Grant Agreement"); and

WHEREAS, the PBC was named an additional recipient of the Grant Amount subsequent to the execution of the Grant Agreement; and

WHEREAS, said Project includes improving the real property described in Exhibit "A" attached hereto and incorporated herein (the "Land"); and

WHEREAS, the PBC has leased the Land from the Authority pursuant to an Agreement dated December 12, 2006 for a term ending December 31, 2056; and

WHEREAS, in order to provide financing for the acquisition and construction of the Project, the County requested that the PBC issue its revenue bonds (the "Bonds"), secured by the revenues of a Lease Agreement by the PBC to the County of the Land and the Project (collectively, the "Property"); and

WHEREAS, the Grant Agreement provides the purposes for which the Grant Amount may be used and provides, inter alia, that the County, Authority and the PBC (collectively, the "Grant Recipient") will not sell, lease, mortgage, or otherwise alienate any right to or interest in the Property, or use the Property for purposes other than and different from those purposes set forth in the Grant Agreement and the application made by Grant Recipient therefore (hereinafter called "Project Purposes"), such alienation and use being prohibited by 13 CFR Part 314 and 15 CFR Part 24, or Office of Management and Budget Circular A-110, Attachment N; and

WHEREAS, EDA is not authorized to permit Grant Recipient to use the Property for purposes other than the Project Purposes or to lease, transfer, convey, mortgage or hypothecate the Property to any party which is not eligible to receive an EDA grant under the authority of the Public Works and Economic Development Act of 1965, As Amended ("PWEDA") Including the Comprehensive Amendments Made by the Economic Development Administration Re-authorization Act of 2004 (P.L. 108-373, 42 U.S.C. 3121 et seq.), unless EDA is repaid its share of the market value of the Property; and

WHEREAS, Grant Recipient agrees to record this Covenant in the office of the Register of Deeds of Sedgwick County, Kansas in the public records affecting real property so as to constitute notice to all persons of any and all restrictions on the use of the Project; and

NOW THEREFORE, in consideration of financial assistance rendered and/or to be rendered by EDA and of other good and valuable consideration, the receipt and adequacy of which the parties hereby acknowledge, and to assure that the benefits of the Project will accrue to the public and be used as intended by both EDA and Grant Recipient, Grant Recipient hereby covenants and agrees as follows:

1. The expected useful life of the Project is twenty (20) years as determined by the Denver Regional Office of the Economic Development Administration (EDA) [see 13 CFR 314.6(a)], per Exhibit "B".
2. Grant Recipient agrees that for twenty (20) years from the date the Grant Recipient accepted the Financial Assistance Award, (October 26, 2006), Grant Recipient will not sell, transfer, convey, or mortgage its leasehold interest in the Land acquired or improved in whole or in part with funds made available through this Grant nor shall Grant Recipient use the Property for purposes other than the Project Purposes without the prior written approval of the Assistant Secretary, Economic Development Administration. Such approval may be withheld until such time as Grant Recipient first pays to EDA the amount of the grant funds disbursed or, at the option of the Government, the Government's fair share of the Property as provided in the Code of Federal Regulations, title 13, Part 314, Subpart A. The Government's fair share of the Property shall be the amount computed by multiplying the percentage of the Federal participation in the total cost of the grant program to the fair market value of the Property at the time of the unauthorized use or conveyance of the Property. The obligations of Grant Recipient, and its successors, under this Agreement shall terminate on October 26, 2026.
3. Grant Recipient further covenants that in the event the Property is used for purposes other than the Project Purposes, or sold, leased, transferred, conveyed or mortgaged without the prior written approval of the Assistant Secretary, Grant Recipient will compensate the Government in the amount of the grant funds disbursed or at the option of the Government, the Government's fair share of the Project as described above; provided that the Grant Recipient's obligations hereunder are subject to annual appropriation under the Kansas Cash Basis Law, K.S.A. 10-1101 *et seq.*
4. Grant Recipient further agrees that, as a prerequisite to accepting the disbursement of any award funds by EDA, Grant Recipient shall execute and place on record against the property acquired or improved in whole or in part with funds made available through this Financial Assistance Award, a Covenant of Purpose, Use and Ownership. The Grant Recipient further agrees that whenever the Property is sold, leased, or otherwise conveyed, pursuant to 13 CFR, Part 314, an opinion of counsel shall be added to the document conveying such interest, stating that the Covenant is satisfactory
5. The parties stipulate and agree that the terms hereof constitute a reasonable restraint on alienation of use, control, and possession of or title to the Property given the Federal interest expressed herein.
6. This Covenant shall run with the Land.

IN WITNESS WHEREOF, the parties have hereunto set their hand as of the day and year first above written by their duly authorized officer.

ATTEST:

SEDGWICK COUNTY, KANSAS,
a political subdivision

Kelly B. Arnold, County Clerk

Kelly Parks, Chairman

STATE OF KANSAS)
) SS:
COUNTY OF SEDGWICK)

The foregoing instrument was acknowledged before me this ____ day of _____, 2009 by Kelly Parks, Chairman, and Kelly B. Arnold, County Clerk, respectively, of Sedgwick County, Kansas, a political subdivision, on behalf of said corporation.

[SEAL]

Notary Public

My appointment expires:

[COVENANT OF PURPOSE – COUNTY SIG PAGE]

THE WICHITA AIRPORT AUTHORITY,

[SEAL]

ATTEST:

Carl Brewer, President

Karen Sublett, City Clerk

Victor D. White, Director of Airports

APPROVED AS TO FORM: _____
Director of Law, City of Wichita

Date: _____

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS.
COUNTY OF SEDGWICK)

This instrument was acknowledged before me on ____ day of _____, 200_, by
[_____], President of The Wichita Airport Authority, a governmental or quasi-
governmental entity duly organized and existing under the constitution and laws of the State of
Kansas.

(Seal)

Notary Public

My Commission Expires: _____

[COVENANT OF PURPOSE – AUTHORITY SIG PAGE]

**SEDGWICK COUNTY PUBLIC
BUILDING COMMISSION**

[SEAL]

ATTEST:

Kurt Watson, President

Bill Hancock, Secretary

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS.
COUNTY OF SEDGWICK)

This instrument was acknowledged before me on ____ day of _____, 200__, by Kurt Watson, President of the Sedgwick County Public Building Commission, a municipal corporation organized under the laws of the State of Kansas.

(Seal)

Notary Public

My Commission Expires: _____

[COVENANT OF PURPOSE – PBC SIG PAGE]

ECONOMIC DEVELOPMENT ADMINISTRATION
UNITED STATES DEPARTMENT OF COMMERCE

By _____
Regional Director

State of _____

County of _____

Before me, a Notary Public, appeared _____ known to me to be the
Regional Director of the Economic Development Administration, an Agency of the United States
Government, who by me being first duly sworn, acknowledged that She/he signed the foregoing
instrument before me on the _____ day of _____, 200__, as the act and deed of such
Agency.

Notary Public in and for the State of

My Commission Expires:

[COVENANT OF PURPOSE – EDA SIG PAGE]

Exhibit B: 314.6 - Encumbrances.

(a) General. Except as provided in paragraph (b) of this section or as otherwise authorized by EDA, Recipient-owned Property acquired or improved in whole or in part with Investment Assistance must not be used to secure a mortgage or deed of trust or in any way collateralized or otherwise encumbered (collectively, an Encumbrance or to Encumber). An Encumbrance includes but is not limited to easements, rights-of-way or other restrictions on the use of any Property.

(b) Exceptions. Subject to EDA's approval, which will not be unreasonably withheld or unduly delayed, paragraph (a) of this section does not apply to: (1) The use of Recipient-owned Property to secure a grant or loan made by a federal or State agency or other public body participating in the same Project; (2) Recipient-owned Property that is subject to an Encumbrance at the time EDA approves the Project, where EDA determines that the requirements of 314.7(b) are met; (3) Encumbrances arising solely from the requirements of a pre-existing water or sewer facility or other utility Encumbrances, which by their terms extend to additional Property connected to such facilities; and (4) Encumbrances in cases where all of the following are met: (i) EDA, in its sole discretion, determines that there is good cause for a waiver of paragraph (a) of this section; (ii) All proceeds secured by the Encumbrance on the Property shall be available only to the Recipient and shall be used only for the Project for which the Investment Assistance applies or for related activities of which the Project is an essential part; (iii) A grantor/lender will not provide funds without the security of a lien on the Property; and (iv) There is a reasonable expectation, as determined by EDA, that the Recipient will not default on its obligations.

(c) Encumbering Recipient-owned Property, other than as permitted in this section, is an Unauthorized Use of the Property under 314.4.

**POE & ASSOCIATES, INC.**5940 E. Central, Suite 200
Wichita, Kansas 67208**CONSULTING ENGINEERS**(316) 685-4114
FAX: (316) 685-4444

October 8, 2009

Mr. Terry Wiggers

Dear Mr Wiggers,

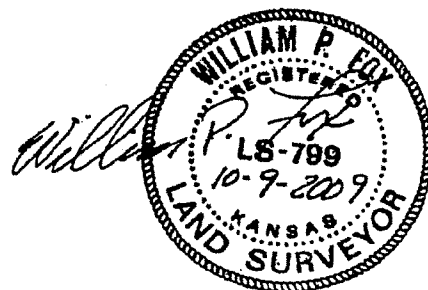
The following is the legal description for the lease area surrounding the Gateway Building campus on Colonel James Jabara Airport. This description is based on a lease area as shown on the Site Plan prepared by Schaffer Johnson Cox Frey Architecture dated January 28, 2008. A sketch of this legal description is attached.

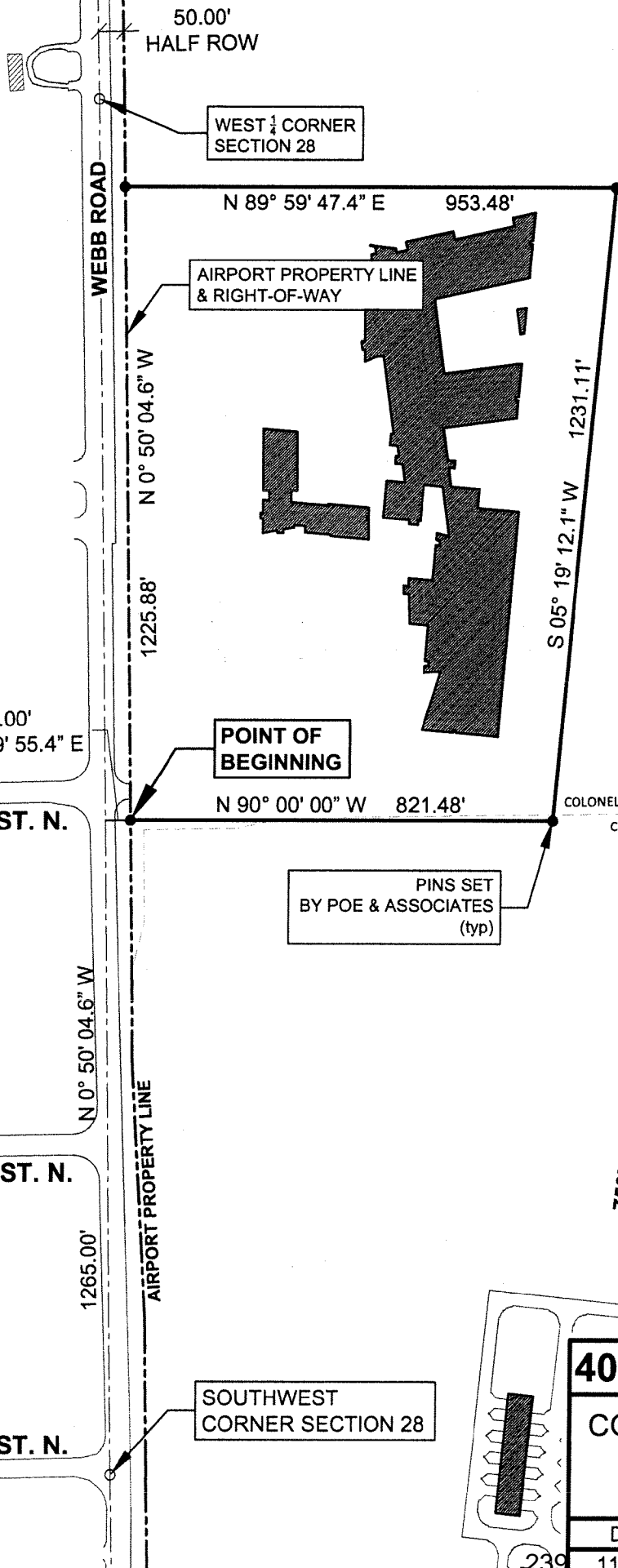
A tract of land being part of the Southwest Quarter of Section 28, Township 26 South, Range 2 East of the Sixth Principal Meridian in Sedgwick County, Kansas, said tract being more particularly described as follows:

Commencing at the Southwest Corner of the Southwest Quarter of Section 28, Township 26 South, Range 2 East of the Sixth Principal Meridian in Sedgwick County, Kansas, thence on a Kansas State Plane Coordinate System NAD 83 Grid Bearing of N 00°50'04.6" W along the West line of said Southwest Quarter of Section 28 for 1265.00 feet, thence N 89°09'55.4" E for 50.00 feet to the point of beginning on the East right-of-way line of Webb Road, thence N 00°50'04.6" W along the East right-of-way line of Webb Road, for 1225.88 feet, thence N 89°59'47.4" E for 953.48 feet, thence S 05°19'12.1" W for 1231.11 feet, thence N 90°00'00" W for 821.47 feet to the point of beginning. Said tract contains 24.97 acres, more or less.

Yours truly,
POE & ASSOCIATES, INC.

Bill Fox, L.S.





4004 N. WEBB ROAD LEASE

COLONEL JAMES JABARA AIRPORT

THE WICHITA AIRPORT AUTHORITY
WICHITA, KANSAS

DATE	DR. BY	SCALE	SHEET
11/25/09	H.G.O.	1" = 300'	1 of 1

City of Wichita
City Council Meeting
December 15, 2009

TO: Mayor and City Council Members

SUBJECT: Appointment of Municipal Court Judges

INITIATED BY: City Council

AGENDA: City Council

Recommendation: Appoint Municipal Court Judges and Administrative Judge

Background: Charter Ordinance No. 191 provides that the City Council has the discretion to consider whether to reappoint incumbent municipal court judges for another term of office without referral to the municipal court judge nominating commission. Charter Ordinance No. 186 authorizes formalized policies and procedures to evaluate the performance and reappointment of incumbent municipal court judges. Further, Charter Ordinance No. 135 provides that the City Council has the authority to designate a presiding judge in charge of the administration of the judicial functions of the court.

Analysis: Pursuant to Charter Ordinance No. 191, the City Council may reappoint the five incumbent judges to fill the term of office that officially commenced on third Tuesday of April 2009 and expires on the third Tuesday of April 2013. The term of office of the incumbent municipal court judges expired on April 19, 2009, however, the service of the judges continued on until they were reappointed or a successor was appointed, pursuant to the carry over provisions of Charter Ordinance No. 186. The term of office of the administrative judge expired on April 19, 2009, however, the service of the administrative judge continued on until she was reappointed or a successor was appointed, pursuant to the provisions of Charter Ordinance Nos. 135 and 186.

Goal Impact: The appointment of the judges addresses the Safe and Secure Community goal.

Legal Considerations: The City Council has the authority to appoint qualified attorneys to serve as municipal court judges and appoint an administrative judge.

Recommendations/Actions: It is recommended that the City Council appoint incumbent Municipal Court Judges Jennifer Jones, Jennifer Lind-Spahn, Bryce Abbott, William Kehr and Ted Griffith to serve a four-year term of office with the beginning of such term retroactive to the third Tuesday of April 2009 and expiring on the third Tuesday of April 2013, and appoint Judge Jennifer Jones as the administrative judge for a one-year term of office with the beginning of such term retroactive to the third Tuesday of April 2009 and expiring on the third Tuesday of April 2010.

**PRELIMINARY ESTIMATES
FOR CITY COUNCIL DECEMBER 15, 2009**

- a. Meridian, 47th Street South to 31st Street South (KDOT) (472-84302/706944/636226/205410/779615) See Special Provisions for traffic instructions. (District IV) - \$8,525,000.00
- b. Bridge over the East Fork Chisholm Creek Tributary No. 5 (northeast of 29th Street North & Oliver) (472-84834/715720/249136) Closed to traffic. (District I) - \$300,000.00
- c. CDBG-R Sidewalk Improvements, Phase 2 (north of Douglas, east of Meridian) (472-84864/980904/) Traffic to be maintained using flagpersons & barricades. (District IV,VI) - \$162,571.00

Statements of Cost:

WATER

- a. Improving Water Distribution System to serve Broad Street Addition and unplatted tracts (south of MacArthur, west of West Street). Total Cost - \$53,087.28 (plus idle fund interest - \$312.72, plus temporary note interest - \$0). Financing to be issued at this time - \$53,400.00. (735436/448-89718/470-109).
- b. Improving Water Distribution System to serve Oatville Addition (north of MacArthur, west of West Street). Total Cost - \$141,360.71 (plus idle fund interest - \$1,180.02, plus temporary note interest - \$759.27). Financing to be issued at this time - \$143,300.00. (735264/448-90072/470-935).
- c. Improving Water Distribution System to serve Silverton Addition (north of 13th Street North, west of 135th Street West). Total Cost - \$88,667.85 (plus idle fund interest - \$1,432.15, plus temporary note interest - \$0). Financing to be issued at this time - \$90,100.00. (735413/448-90239/470-086).
- d. Improving Water Distribution System to serve Silverton Addition (north of 13th Street North, west of 135th Street West). Total Cost - \$82,361.91 (plus idle fund interest - \$1,238.09, plus temporary note interest - \$0). Financing to be issued at this time - \$83,600.00. (735414/448-90240/470-087).
- e. Improving Water Distribution System to serve Woods North Addition (south of 29th Street North, west of 127th Street East). Total Cost - \$122,947.58 (plus idle fund interest - \$1,452.42, plus temporary note interest - \$0). Financing to be issued at this time - \$124,400.00. (735409/448-90364/470-082).
- f. Improving Water Distribution System on Navajo and Bluff to serve McCarty 2nd Addition (south of 31st Street South, west of the Kansas Turnpike). Total Cost - \$43,003.60 (plus idle fund interest - \$296.40, plus temporary note interest - \$0). Financing to be issued at this time - \$43,300.00. (735425/448-90396/470-098).
- g. Improving Water Distribution System to serve Via Christi West Campus Addition (east of 151st Street West, north of 21st Street North). Total Cost - \$558,299.27 (plus idle fund interest - \$4,300.73, plus temporary note interest - \$0). Financing to be issued at this time - \$562,600.00. (735429/448-90402/470-102).
- h. Improving Water Distribution System to serve Via Christi West Campus Addition (east of 151st Street West, north of 21st Street North). Total Cost - \$88,621.82 (plus idle fund interest - \$578.18, plus temporary note interest - \$0). Financing to be issued at this time - \$89,200.00. (735430/448-90404/470-103).
- i. Improving Water Distribution System to serve Willow Creek East 2nd Addition (east of Greenwich, south of Harry). Total Cost - \$61,351.62 (plus idle fund interest - \$348.38, plus temporary note interest - \$0). Financing to be issued at this time - \$61,700.00. (735434/448-90407/470-107).
- j. Improving Water Distribution System to serve North Greenwich Addition (north of 29th Street North, east of Greenwich). Total Cost - \$79,547.94 (plus idle fund interest - \$452.06, plus temporary note interest - \$0). Financing to be issued at this time - \$80,000.00. (735435/448-90411/470-108).
- k. Improving Water Distribution System to serve Westside Church of Christ Addition (north of 47th Street South, west of Meridian). Total Cost - \$18,304.40 (plus idle fund interest - \$95.60, plus temporary note interest - \$0). Financing to be issued at this time - \$18,400.00. (735437/448-90420/470-110).
- l. Improving Water Distribution System to serve Cox Machine 3rd Addition (east of Hoover, north of 21st Street North). Total Cost - \$37,733.17 (plus idle fund interest - \$166.83, plus temporary note interest - \$0). Financing to be issued at this time - \$37,900.00. (735438/448-90433/470-111).

SEWER

- m. Constructing Lateral 1, Main 20, Southwest Interceptor Sewer to serve Cox Machine 3rd Addition (east of Hoover, north of 21st Street North). Total Cost - \$41,208.67 (plus idle fund interest - \$291.33, plus temporary note interest - \$0). Sewer Main Benefit Fee - \$0. Financing to be issued at this time - \$41,500.00. (744304/468-83161/480-993).

- n. Constructing Lateral 2, Main 16, Sanitary Sewer No. 23 to serve Earhart Elementary School in Edwards Gardens Addition (south of 53rd Street North, east and west of Arkansas). Total Cost - \$2,003,447.03 (plus idle fund interest - \$16,297.76, plus temporary note interest - \$22,155.21). Sewer Main Benefit Fee - \$0. Financing to be issued at this time - \$2,041,900.00. (744088/468-83876/480-776).
- o. Constructing Lateral 5, Main 22, Southwest Interceptor Sewer to serve Oatville Addition (north of MacArthur, west of West Street). Total Cost - \$192,848.74 (plus idle fund interest - \$872.26, plus temporary note interest - \$1,979.00). Sewer Main Benefit Fee - \$0. Financing to be issued at this time - \$195,700.00. (744113/468-83980/480-801).
- p. Constructing Lateral 274, Main 5, Sanitary Sewer No. 22 to serve R.A. Morris Tracts Addition (south of 13th Street North, west of West Street). Total Cost - \$57,924.17 (plus idle fund interest - \$564.09, plus temporary note interest - \$311.74). Sewer Main Benefit Fee - \$0. Financing to be issued at this time - \$58,800.00. (744136/468-84016/480-824).
- q. Constructing Lateral 1, Main 16, Sanitary Sewer No. 23 to serve JB Muller, Ark Valley Park, Suburban Acres, Riverside Acres Additions and unplatted tracts (south of 53rd Street North, east and west of Arkansas). Total Cost - \$536,312.78 (plus idle fund interest - \$3,086.57, plus temporary note interest - \$7,353.99). Sewer Main Benefit Fee - \$75,646.66. Financing to be issued at this time - \$622,400.00. (744172/468-84149/480-860).
- r. Constructing Lateral 8, Main 26 War Industries Sewer to serve K-96 Business Park (north of 29th Street North, west of Greenwich). Total Cost - \$4,726.54 (plus idle fund interest - \$173.46, plus temporary note interest - \$0). Sewer Main Benefit Fee - \$0. Financing to be issued at this time - \$4,900.00. (744229/468-84155/480-917).
- s. Constructing Lateral 275, Main 5, Sanitary Sewer No. 22 to serve West Central Gardens Addition and Avery Addition (north of Central, west of I-235). Total Cost - \$67,201.68 (plus idle fund interest - \$698.32, plus temporary note interest - \$0). Sewer Main Benefit Fee - \$1,800.00. Financing to be issued at this time - \$69,700.00. (744200/468-84239/480-888).
- t. Constructing Lateral 276, Main 5, Sanitary Sewer No. 22 to serve Armstrong Estates Addition (north of Central, west of Hoover). Total Cost - \$24,548.43 (plus idle fund interest - \$251.57, plus temporary note interest - \$0). Sewer Main Benefit Fee - \$0. Financing to be issued at this time - \$24,800.00. (744293/468-84283/480-982).
- u. Constructing Lateral 3, Main 16, Sanitary Sewer No. 23 to serve Riverside Acres Addition (north of 40th Street North, west of Dale). Total Cost - \$17,657.99 (plus idle fund interest - \$242.01, plus temporary note interest - \$0). Sewer Main Benefit Fee - \$1,600.00. Financing to be issued at this time - \$19,500.00. (744220/468-84334/480-908).
- v. Constructing Main 24, Southwest Interceptor Sewer and Lift Station to serve Edge Water Addition (south of 45th Street North, west of Hoover). Total Cost - \$2,148,706.41 (plus idle fund interest - \$7,964.59, plus temporary note interest - \$16,229.00). Sewer Main Benefit Fee - \$0. Financing to be issued at this time - \$2,172,900.00. (744262/468-84364/480-951).
- w. Constructing Lateral 524, Southwest Interceptor Sewer to serve Lubbers Addition, Pinkstons 2nd Addition and Douty Addition (north of 31st Street South, east of Hoover). Total Cost - \$41,799.52 (plus idle fund interest - \$300.48, plus temporary note interest - \$0). Sewer Main Benefit Fee - \$6,100.00. Financing to be issued at this time - \$48,200.00. (744249/468-84397/480-937).
- x. Constructing Lateral 6, Main 14, War Industries Sewer to serve McCarty 2nd Addition (south of 31st Street South, west of Kansas Turnpike). Total Cost - \$23,942.77 (plus idle fund interest - \$157.23, plus temporary note interest - \$0). Sewer Main Benefit Fee - \$0. Financing to be issued at this time - \$24,100.00. (744291/468-84524/480-980).
- y. Constructing Lateral 416, Four Mile Creek Interceptor to serve Willow Creek East 2nd Addition (east of Greenwich, south of Harry). Total Cost - \$62,266.21 (plus idle fund interest - \$333.79, plus temporary note interest - \$0). Sewer Main Benefit Fee - \$0. Financing to be issued at this time - \$62,600.00. (744298/468-84553/480-987).
- z. Constructing Main 29, War Industries Sewer to serve North Greenwich Addition (north of 29th Street North, east of Greenwich). Total Cost - \$566,356.80 (plus idle fund interest - \$3,643.20, plus temporary note interest - \$0). Sewer Main Benefit Fee - \$0. Financing to be issued at this time - \$570,000.00. (744299/468-84560/480-988).
- aa. Constructing Lateral 126, Sanitary Sewer No. 23 to serve St. James Episcopal Church in Cossitt & Magill's Addition (north of Douglas, east of Hillside). Total Cost - \$56,165.05 (plus idle fund interest - \$334.95, plus temporary note interest - \$0). Sewer Main Benefit Fee - \$0. Financing to be issued at this time - \$56,500.00. (744301/468-84576/480-990).

- bb. Constructing Lateral 532, Southwest Interceptor Sewer to serve BG's 1st Addition (south of MacArthur, west of Hoover). Total Cost - \$32,751.50 (plus idle fund interest - \$136.50, plus temporary note interest - \$0). Sewer Main Benefit Fee - \$6,512.00. Financing to be issued at this time - \$39,400.00. (744306/468-84617/480-995).

STORM WATER SEWER AND STORM WATER DRAIN

- cc. Constructing Storm Water Drain No. 287 to serve The Woods Addition (east of 151st Street West, north of Maple). Total Cost - \$1,003,453.34 (plus idle fund interest - \$5,509.70, plus temporary note interest - \$7,136.96). Financing to be issued at this time - \$1,016,100.00. (751465/468-84131/485-356).
- dd. Design of Storm Water Drain No. 328 to serve Hampton Square Addition (north of 37th Street North, west of Maize). Total Cost - \$7,576.19 (plus idle fund interest - \$223.81, plus temporary note interest - \$0). Financing to be issued at this time - \$7,800.00. (751452/468-84356/485-343).
- ee. Constructing Storm Water Sewer No. 638 to serve Waterfront Residential Addition (north of 13th Street North, west of Greenwich). Total Cost - \$782,864.58 (plus idle fund interest - \$7,817.01, plus temporary note interest - \$7,018.41). Financing to be issued at this time - \$797,700.00. (751462/468-84423/485-353).
- ff. Constructing Storm Water Drain No. 338 to serve Monarch Landing 2nd Addition (north of 21st Street North, west of 159th Street East). Total Cost - \$649,291.86 (plus idle fund interest - \$5,920.87, plus temporary note interest - \$8,387.27). Financing to be issued at this time - \$663,600.00. (751464/468-84434/485-355).
- gg. Constructing Storm Water Drain No. 342 to serve Waterfront Residential Addition and Waterfront 6th Addition (north of 13th Street North, west of Greenwich). Total Cost - \$258,926.83 (plus idle fund interest - \$2,841.09, plus temporary note interest - \$2,232.08). Financing to be issued at this time - \$264,000.00. (751459/468-84449/485-350).
- hh. Design of Storm Water Drain No. 349 to serve Sierra Hills 2nd Addition (north of Pawnee, west of 143rd Street East). Total Cost - \$42,125.77 (plus idle fund interest - \$257.23, plus temporary note interest - \$317.00). Financing to be issued at this time - \$42,700.00. (751477/468-84518/485-368).

City of Wichita
City Council Meeting
December 15, 2009

TO: Mayor and City Council

SUBJECT: Community Events – Intrust Bank Arena Open House
(District I)

INITIATED BY: Division of Arts & Cultural Services

AGENDA: Consent

Recommendation: Approve the request for temporary street closures.

Background: In accordance with the Community Events Procedure, the event promoter Mike Sandbo, is coordinating with City of Wichita staff, subject to final approval by the City Council.

Analysis: The following street closure request has been submitted:

Intrust Bank Arena Open House January 2, 2010 10:00 am – 6:00 pm
§ Waterman, Emporia to Mead

Client will arrange to remove blockades as necessary to allow emergency vehicle access during the entire designated time period. Blockades will be removed immediately upon completion of the event.

Financial Consideration: The event sponsor is responsible for all costs associated with special event.

Goal Impact: Enhance the Quality of Life

Legal Consideration: None

Recommendation/Actions: It is recommended that the City Council approve the request subject to: (1) Hiring off-duty certified law enforcement officers as required; (2) Obtaining barricades to close the streets in accordance with requirements of Police, Fire and Public Works Department. (3) Certificate of Liability Insurance on file with the Community Event Coordinator.

City of Wichita
City Council Meeting
December 15, 2009

TO: Mayor and City Council

SUBJECT: Community Events – Intrust Bank Arena Brad Paisley Concert
(District I)

INITIATED BY: Division of Arts & Cultural Services

AGENDA: Consent

Recommendation: Approve the request for temporary street closures.

Background: In accordance with the Community Events Procedure, the event promoter Mike Sandbo, is coordinating with City of Wichita staff, subject to final approval by the City Council.

Analysis: The following street closure request has been submitted:

Intrust Bank Arena Brad Paisley Concert January 9 through January 10, 2010 7:00 am – 2:00 am.

- § Waterman, Emporia to Mead
- § William, St. Francis to Commerce
- § Commerce, William to Waterman

Client will arrange to remove blockades as necessary to allow emergency vehicle access during the entire designated time period. Blockades will be removed immediately upon completion of the event.

Financial Consideration: The event sponsor is responsible for all costs associated with special event.

Goal Impact: Enhance the Quality of Life

Legal Consideration: None

Recommendation/Actions: It is recommended that the City Council approve the request subject to: (1) Hiring off-duty certified law enforcement officers as required; (2) Obtaining barricades to close the streets in accordance with requirements of Police, Fire and Public Works Department. (3) Certificate of Liability Insurance on file with the Community Event Coordinator.

City of Wichita
City Council Meeting
December 15, 2009

TO: Mayor and City Council

SUBJECT: Community Events – Intrust Bank Arena ROK ICT Concert
(District I)

INITIATED BY: Division of Arts & Cultural Services

AGENDA: Consent

Recommendation: Approve the request for temporary street closures.

Background: In accordance with the Community Events Procedure, the event promoter Mike Sandbo, is coordinating with City of Wichita staff, subject to final approval by the City Council.

Analysis: The following street closure request has been submitted:

Intrust Bank Arena ROK ICT Concert January 12, 2010 4:00 pm – 10:00 pm
§ Waterman, Emporia to Mead

Client will arrange to remove blockades as necessary to allow emergency vehicle access during the entire designated time period. Blockades will be removed immediately upon completion of the event.

Financial Consideration: The event sponsor is responsible for all costs associated with special event.

Goal Impact: Enhance the Quality of Life

Legal Consideration: None

Recommendation/Actions: It is recommended that the City Council approve the request subject to: (1) Hiring off-duty certified law enforcement officers as required; (2) Obtaining barricades to close the streets in accordance with requirements of Police, Fire and Public Works Department. (3) Certificate of Liability Insurance on file with the Community Event Coordinator.

City of Wichita
City Council Meeting
December 15, 2009

TO: Mayor and City Council

SUBJECT: Community Events – Intrust Bank Arena Harlem Globetrotters
(District I)

INITIATED BY: Division of Arts & Cultural Services

AGENDA: Consent

Recommendation: Approve the request for temporary street closures.

Background: In accordance with the Community Events Procedure, the event promoter Mike Sandbo is coordinating with City of Wichita staff, subject to final approval by the City Council.

Analysis: The following street closure request has been submitted:

Intrust Bank Arena Harlem Globetrotters, January 22, 2010 5:00 pm – 11:00 pm
§ Waterman, Emporia to Mead

Client will arrange to remove blockades as necessary to allow emergency vehicle access during the entire designated time period. Blockades will be removed immediately upon completion of the event.

Financial Consideration: The event sponsor is responsible for all costs associated with special event.

Goal Impact: Enhance the Quality of Life

Legal Consideration: None

Recommendation/Actions: It is recommended that the City Council approve the request subject to: (1) Hiring off-duty certified law enforcement officers as required; (2) Obtaining barricades to close the streets in accordance with requirements of Police, Fire and Public Works Department; and (3) Certificate of Liability Insurance on file with the Community Event Coordinator.

City of Wichita
City Council Meeting
December 15, 2009

TO: Mayor and City Council

SUBJECT: Community Events – Intrust Bank Arena Wichita Thunder vs. Tulsa Oilers
(District I)

INITIATED BY: Division of Arts & Cultural Services

AGENDA: Consent

Recommendation: Approve the request for temporary street closures.

Background: In accordance with the Community Events Procedure, the event promoter Mike Sandbo, is coordinating with City of Wichita staff, subject to final approval by the City Council.

Analysis: The following street closure request has been submitted:

Intrust Bank Arena Wichita Thunder vs. Tulsa Oilers January 23, 2010 4:30 pm – 11:00 pm
§ Waterman, Emporia to Mead

Client will arrange to remove blockades as necessary to allow emergency vehicle access during the entire designated time period. Blockades will be removed immediately upon completion of the event.

Financial Consideration: The event sponsor is responsible for all costs associated with special event.

Goal Impact: Enhance the Quality of Life

Legal Consideration: None

Recommendation/Actions: It is recommended that the City Council approve the request subject to: (1) Hiring off-duty certified law enforcement officers as required; (2) Obtaining barricades to close the streets in accordance with requirements of Police, Fire and Public Works Department; and (3) Certificate of Liability Insurance on file with the Community Event Coordinator.

City of Wichita
City Council Meeting
December 15, 2009

TO: Mayor and City Council

SUBJECT: Aquifer Storage and Recovery – Substation Transformer Equipment Contract

INITIATED BY: Water Utilities

AGENDA: Consent

Recommendation: Approve the agreement with WEG Electric Corporation for the transformer purchase and assembly for the Aquifer Storage and Recovery (ASR) project.

Background: On July 10, 2007, the City Council approved and instructed staff to proceed with the projects necessary for Phase II of the Equus Beds ASR Project. The new water treatment plant and intake structure, which are part of this project, require an electrical substation to supply the electricity to run the systems.

Analysis: The electrical substation is comprised of two 12/16/20 MVA Power Transformers. The transformers generally require a lead time of 36 weeks for construction and delivery, and the required due date for them to be installed is October 1, 2010.

The Purchasing Manager issued a Request for Proposals (RFP) with a corresponding sealed bid for Substation Transformer Equipment Procurement for the Equus Beds Well Field section of the Production & Pumping Division of Water Utilities. The RFP was prepared in a manner in which vendors would be selected as qualified to bid, and then their sealed proposals would be opened to determine the lowest cost.

Proposals were received from Team Electric Supply, Inc.; Waukesha, Howard Industries, Kuhlman Electric, Pennsylvania Transformer Technology, Inc.; Panteth Technologies, WEG Electric Corporation and Delta Star, Inc. The Technical SSSC unanimously agreed to open the proposals from Waukesha, Kuhlman Electric, WEG Electric Corporation and Delta Star. The remaining companies did not provide complete submittals regarding references or previous contracts, had no United States installations, or had exceptions to the requirements set forth in the RFP. WEG Electric Corporation provided the lowest base bid, as well as the lowest bid for the requested spare parts and service agreements.

Financial Considerations: The estimated cost for design, construction and installation of the transformers and spare parts is \$895,796. Funding for these services is available in CIP W-549, Water Supply Plan, which is for future water supply development.

Goal Impact: The project will help ensure efficient infrastructure by ensuring that Water Utilities has sufficient facilities to support and maintain its infrastructure in the Equus Beds Well Field.

Legal Considerations: The Agreement has been approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the City Council approve the Agreement and authorize the necessary signatures.

Attachments: Agreement with WEG Electric Corporation.

AGREEMENT

THIS AGREEMENT, with an effective date of the ____ day of _____, 2009, is made and entered into between the CITY OF WICHITA, KANSAS, a municipal corporation, acting by and through the Wichita Water Utilities (hereinafter called the "City", "Owner" and/or "Buyer"), and WEG Electric Corporation, with a principal place of business at 1327 Northbrook Parkway, Suite 490, Suwanee, GA 30024, (hereinafter called the "Manufacturer" and/or "Seller"). (City and Manufacturer may be collectively referred to herein as "Parties", or individually as "Party".)

Recitals

WHEREAS, the City has developed an Integrated Local Water Supply (ILWS) Plan to meet the City's water supply requirements through the year 2050. This Plan consists of a portfolio of projects and components to be constructed in phases over a 10-year period that must be coordinated in order to meet the Plan's water supply goals.

WHEREAS, the City has solicited proposals for FP930063; and

WHEREAS, Manufacturer has submitted the proposal most beneficial to the City and is ready, willing and able to provide the Goods and Services requested by the City;

NOW, THEREFORE, in consideration of the promises and mutual covenants and obligations set forth herein, the Parties mutually agree as follows:

Section I – Work

- A. Manufacturer shall provide to the City all those Goods and Services specific in its response to Formal Proposal Number [FP930063] which is incorporated herein by this reference the same as if it were fully set forth. The Request for Proposal (RFP) package, including all specifications, plans and addenda provided by the City as part of the RFP letting process for Formal Proposal Number [FP930063] shall be considered a part of this contract and is incorporated by reference herein.

Section II – The Project

- A. The Project for which the Work under the Contract Documents may be a whole or only a part is generally described as follows:

Construct a new 138kV to 12.47kV substation. The substation will include the 138kV primary bus and protective devices, two main power transformers, and secondary protective devices and distribution within the limits of the substation project site.

Section III - Engineer

- A. The Project has been designed by CH2M HILL (Engineer), which is to act as the City's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.
- B. The Requirements of the RFP were prepared by CH2M HILL, 9191 South Jamaica Street, Englewood, CO 80112, in conjunction with the Program Manager, R. W. Beck, Inc., 303 South Topeka Avenue, Wichita, Kansas 67202.

Section IV – Point of Delivery

- A. The place where the Goods are to be delivered is defined in the General Conditions as the Point of Delivery and is located at 11501 N. 119th St. W., Sedgwick, KS 67135, southwest of the intersection of 117th Street North and 119th Street West in Sedgwick County, Kansas.

Section V – Contract Times

- A. **Time Is of the Essence.** All time limits for Milestones, if any, Substantial completions, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract. The reference to days in this contract shall be understood to mean calendar days.
- B. **Dates for Substantial Completion and Final Payment.** The work will be substantially completed on or before October 1, 2010, and completed ready for final payment in accordance with Paragraph 10.06 of the General Conditions on or before December 15, 2010.
- C. **Liquidated Damages.** Manufacturer and City recognize that time is of the essence as stated in Section V.A above and that the City will suffer financial loss in an amount that is difficult to quantify if the Work is not completed within the time specified in Section V.B above, plus any extension thereof allowed in accordance with Article 7.03 of the General Conditions. Accordingly, if the Manufacturer fails to deliver and unload the Equipment by October 1, 2010, it is understood and the Manufacturer hereby agrees that the amount of \$2,000 per calendar day, to a maximum of 10% of the contract price, may be deducted from the moneys due to the Manufacturer for each intervening calendar day that expires after the time specified in Section V.B above for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Manufacturer shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by the City, Manufacturer shall pay the City \$2,000 for each calendar day that expires after the time specified in Section V.B above for completion and readiness for final payment until the Work is completed, delivered, unloaded and ready for final payment. In the event liquidated damages are caused by the Manufacturer and another entity, the City may reasonably apportion damages. Manufacturer will not be liable if performance failure arises out of causes beyond their control and without fault or negligence of the Manufacturer (e.g. acts of God, war,

fires, floods, freight embargos), provided that Manufacturer as notified in Writing the reason for the performance failure and submitted proof of the circumstances responsible for non-performance. The right to assess liquidated damages is in addition to, and not in limitation of, any right or remedy available to the City.

Section VI – Contract Price

- A. Owner shall pay Manufacturer for completion of the Work in accordance with the Contract Documents an amount in current funds at the price stated in Manufacturer's Price Proposal and Price Proposal Amendment dated October 28, 2009 attached hereto as an exhibit.

Section VII - Payment Procedures

- A. **Submittal and Processing of Payments.** Manufacturer shall submit Applications for Payment as specified herein and in accordance with Article 10 of the General Conditions. Applications for Payment will be processed by Owner as provided in the General Conditions.
- B. **Progress Payments.** Payments will be made on the basis of completion of the Work in accordance with the Contract Documents and as stated in the following Payment Schedule.

MILESTONE AND PAYMENT SCHEDULE

<u>Work Item Description</u>	<u>Quantity</u>	<u>Value</u>	<u>Required Delivery Date</u>
Approved Final Submittals (Includes Drawings and Calculations).	1 Lot	10%	Complete set of submittals due 6 weeks after receipt of order (ARO).
Deliver Certified and Witnessed Factory Test Results	1 Lot	10%	(Include with Technical Proposal).
Receipt and Acceptance of all Equipment at Project Site Location (Substantial Completion).	1 Lot	65%	October 1, 2010
Completion of Final System Training and Final Acceptance of the Work (Final Completion).	1 Lot	15%	December 1, 2010

- C. **Invoice Requirements.** The following information shall be included on all invoices provided by Manufacturer:
1. Owner Purchase Order, OCA, and PPN Numbers.
 2. Item description and quantity.
 3. Item price and extension.
 4. Reference Work Item Description as noted in the above Table.
 5. Any other information deemed necessary by the Manufacturer.

- D. **Final Payment.** Upon final completion and acceptance of the Work in accordance with Paragraph 10.05 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 10.05.

Section VIII - Manufacturer's Representations

- A. In order to induce City to enter into this Agreement, Manufacturer makes the following representations:
1. Manufacturer has examined and carefully studied the Contract Documents and the other related data identified in the RFP.
 2. Manufacturer has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 3. Manufacturer is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
 4. Manufacturer is aware of the general nature of work to be performed by Contractor and others at the Site that relates to the Work as indicated in the Contract Documents.
 5. Manufacturer has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Manufacturer has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Manufacturer.
 6. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

Section IX - Contract Documents

- A. **Contents.** The Contract Documents consist of the following:
1. Request for Proposal
 2. Manufacturer's Proposal
 3. This Agreement (pages 1 to 255, inclusive).
 4. Performance bond (pages 1 to 2, inclusive).
 5. Payment bond (pages 1 to 2, inclusive).
 6. General Conditions (pages 1 to 17, inclusive).
 7. Supplementary Conditions (pages 1 to 6, inclusive).
 8. Specifications as listed in the table of contents of the Project Manual.
 9. Addendum No. 1 (inclusive).
 10. Exhibits to this Agreement (enumerated as follows):
 - a. Exhibit A - Assignment of Contract, Consent to Assignment, and Acceptance of Assignment (pages 1 to 1, inclusive).

- b. Exhibit B – Agreement to Assignment by Seller's Surety (pages 1 to 1, inclusive).
 - c. Exhibit C – Revised Non-Discrimination and Equal Employment Opportunity/Affirmative Action Program Requirements Statement for Contracts or Agreements (pages 1 to 3, inclusive).
 - d. Manufacturer's Price Proposal (pages 1 to 6, inclusive).
 - e. Documentation submitted by Manufacturer prior to Notice of Award (pages 1 to 4, inclusive).
11. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
- a. Notice to Proceed (pages _____ to _____, inclusive).
 - b. Work Change Directives.
 - c. Change Orders.
- B. The documents listed in Section IX.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Section IX.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

Section X – Miscellaneous

- A. **Terms.** Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.
- B. **Assignment.** Buyer has the right to assign the Contract for furnishing Goods and Services hereunder and Seller shall accept such assignment. Forms documenting assignment of the Contract and consent of Seller's surety to the assignment are attached as Exhibits to this Agreement. The Contract will be executed in the name of Buyer initially, and may be assigned to a General Contractor (Assignee) designated by Buyer. Upon determination by Buyer, assignment will occur on the effective date of the Agreement between Buyer and General Contractor, which is expected to occur on or about May 19, 2010.
1. As of the date of acceptance of assignment by Assignee, all references in the Contract Documents to Buyer shall mean designated Assignee whose responsibilities will include installation and incorporation of the Goods. Assignment of the Contract shall relieve Buyer from all further obligations and liabilities under the Contract. After assignment, Seller shall become a subcontractor or supplier to Assignee and except as noted herein, all rights, duties, and obligations of Buyer under the Contract shall become the rights, duties, and obligations of Assignee. After assignment of the Contract all performance warranties and guarantees required by the Contract Documents will continue to run for the benefit of Buyer

and, in addition, for the benefit of Assignee. Except as provided in Section X.B., all rights, duties and obligations of Engineer to Assignee and Seller under this Contract will cease.

2. Engineer will review, comment on, and participate in the source quality control, field control, quality control, and field performance testing processes as directed by the Buyer. Engineer will review Seller's Applications for Payment and make recommendations to Assignee for payments as provided in Paragraphs 10.02 and 10.06 of the General Conditions. Upon written request of either Assignee or Seller, Engineer will issue with reasonable promptness such clarifications of the Contract Documents, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. Such written clarifications and interpretations will be final and binding on Assignee and Seller unless; an appeal from Engineer's clarification or interpretation is made within the time limits and in accordance with the dispute resolution procedures set forth in Article 13 of the General Conditions; or If no such dispute resolution procedures have been set forth, a written notice of intention to appeal is delivered by Assignee or Seller to the other party within 30 days after the date of such decision, and a formal proceeding is instituted by appealing party in a forum or competent jurisdiction within 60 days after the date of such decision (unless otherwise agreed to in writing by assignee and Seller), to exercise such rights or remedies as appealing party may have with respect to such clarification or interpretation in accordance with applicable Laws and Regulations. When rendering such a clarification or interpretation, Engineer will not show partiality to Assignee or Seller and will not be liable in connection with any clarification or interpretation rendered in good faith.
3. No other assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound. Specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law). Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge assignor from any duty or responsibility under the Contract Documents.

C. **Severability.** Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon City and Manufacturer, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

D. **Manufacturer's Certifications.** Manufacturer certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Section X.C:

1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the proposal process or in the Contract execution;
2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the proposal process or the execution of the Contract to the detriment of the City, (b) to

establish Proposal or Contract prices at artificial non-competitive levels, or (c) to deprive the City of the benefits of free and open competition;

3. "collusive practice" means a scheme or arrangement between two or more Proposers, with or without the knowledge of the City, a purpose of which is to establish prices at artificial, non-competitive levels; and
4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the proposal process or affect the execution of the Contract.

- E. **Indemnification and Insurance.** Manufacturer shall save and hold the City harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused in whole or in part by errors, omissions or negligent acts of Manufacturer, its officers, agents, servants, or employees, occurring in the performance of its services under this Contract, or arising from any defect in the materials or workmanship of any product provided in the performance of this Contract.

Manufacturer shall at a minimum provide insurance of the types and coverages as stipulated in the General Conditions (Paragraph 4.02) and Supplementary Conditions. In addition, Manufacturer shall maintain sufficient coverage to protect the Equipment against all losses until the Equipment is unloaded, placed in its final location, tested, accepted by Owner, and transferred to the custody of the Contractor. In the event that the Equipment or any component thereof is lost, stolen, damaged or destroyed prior to transfer to the Contractor, the Manufacturer shall replace it at no cost to the Owner.

- F. **Independent Contractor.** The relationship of the Manufacturer to the City will be that of an independent contractor. No employee or agent of the Manufacturer shall be considered an employee of the City.

- G. **Compliance with Laws.** Manufacturer shall comply with all laws, statutes and ordinances which may pertain to the providing of services under this Contract.

- H. **Non-Discrimination.** Manufacturer shall comply with all applicable requirements of the City of Wichita Revised Non-Discrimination and Equal Employment - Affirmative Action Program Requirements Statement for Contracts or Agreements attached hereto as Attachment A.

- I. **Third Party Rights.** It is specifically agreed between the parties that it is not intended by any of the provisions of any part of this Contract to create with the public or any member thereof a third-party beneficiary relationship hereunder, or to authorize anyone not a party to this Contract to maintain a suit for damages pursuant to the terms or provisions of this Contract.

- J. **No Arbitration.** The Manufacturer and the City shall not be obligated to resolve any claim or dispute related to the Contract by arbitration. Any reference to arbitration in proposal documents is deemed void.

- K. **Governing Law.** This contract shall be interpreted according to the laws of the State of Kansas.

- L. **Representative's Authority to Contract.** By signing this contract, the representative of the Manufacturer represents that he or she is duly authorized by the Manufacturer to execute this contract, and that the Manufacturer has agreed to be bound by all its provisions.

In **WITNESS WHEREOF**, the Parties hereto have executed this Agreement as of the day and year first above written.

The Effective Date of this Agreement shall be the date first written above.

CITY:

By: _____

Title: _____

Attest: _____

Title: _____

Approved as to
Form: _____

Title: _____

Address for giving notices:

Manufacturer

WEG Electric Corp.

By: _____

Title: President

(If Manufacturer is a corporation, partnerships, or
a joint venture, attach evidence of authority to
sign.)

Attest: _____

Title: Director of Operations

Address for giving notices:

1327 Northbrook Parkway, Suite 490
Suwanee, GA 30024

License No.: _____

(Where applicable)

**EXHIBIT A
TO AGREEMENT**

ASSIGNMENT OF CONTRACT; CONSENT TO ASSIGNMENT; AND ACCEPTANCE OF ASSIGNMENT

This assignment will be effective on the Effective Date of the Agreement between Buyer and General Contractor.

The Contract between The City of Wichita ("Buyer") and _____ ("Seller") for furnishing Goods and Special Services under the Contract Documents entitled _____ is hereby assigned, transferred, and set over to _____ ("General Contractor"). General Contractor shall be totally responsible for the performance of Seller and for the duties, rights, and obligations of Buyer, not otherwise retained by Buyer, under the terms of the Contract between Buyer and Seller.

ASSIGNMENT DIRECTED BY:

City of Wichita ("Buyer")

By: _____

(Signature)

(Title)

ASSIGNMENT ACKNOWLEDGED AND ACCEPTED BY:

("Seller")

By: _____

(Signature)

(Title)

ASSIGNMENT ACCEPTED BY:

("General Contractor")

By: _____

(Signature)

(Title)

**EXHIBIT B
TO AGREEMENT**

AGREEMENT TO ASSIGNMENT BY SELLER'S SURETY

Surety hereby acknowledges and agrees that the Contract for furnishing Goods and Special Services under the Contract Documents entitled _____ by and between The City of Wichita ("Buyer") and _____ ("General Contactor"). In accordance with Section X.B. Assignment of Agreement between Buyer and Seller.

Surety further agrees that, upon assignment of the Contract, General Contractor shall have all the rights of Buyer under the Performance Bond.

ASSIGNMENT ACCEPTED BY SURETY:

By: _____

(Signature)

(Title)

(Attach Power of Attorney)

EXHIBIT C

**REVISED NON-DISCRIMINATION AND
EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM
REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS**

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:

- A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.
- B. Requirements of the State of Kansas:
 - 1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
 - 2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
 - 3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
 - 4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.
- C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:
1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
 2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
 3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;
 4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.
 5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars (\$5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

City of Wichita
City Council Meeting
December 15, 2009

TO: Mayor and City Council

SUBJECT: 47th Street South Improvement, between Broadway & Lulu
(District III)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the design agreement.

Background: Construction is underway to improve the 47th Street South and I-135 Freeway Interchange, including improvements to 47th Street from Lulu to Broadway. The project, which is being administered by the Kansas Department of Transportation (KDOT), is funded by the American Recovery and Reinvestment Act of 2009 (ARRA). HNTB Corporation contracted with KDOT to provide design services for the project under construction, however waterline plans were not included within the scope of services with KDOT. An agreement with HNTB has been prepared to provide waterline design for this project.

Analysis: The paving plans show the existing 12" waterline in conflict with the new storm sewer system west of I-135 on the south side of 47th Street South. The existing waterline conflicts with new storm inlets on the north side of 47th Street South, east of I-135.

Financial Considerations: The HNTB design fee is \$87,545.68 funded by the Water Utility.

Goal Impact: This project addresses the Efficient Infrastructure goal by improving traffic flow through a major transportation corridor.

Legal Considerations: The Law Department has approved the agreement as to legal form.

Recommendation/Action: It is recommended that the City Council approve the design agreement and authorize the necessary signatures.

Attachments: Agreement

AGREEMENT

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

HNTB CORPORATION

for

47TH STREET SOUTH AND I-135

THIS AGREEMENT, made this _____ day of _____, 2009, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and HNTB CORPORATION, party of the second part, hereinafter called the "ENGINEER".

WITNESSETH: That

WHEREAS, the CITY intends to construct;

**I-135 & 47TH STREET SOUTH
(Water Line Relocation)
(Project No. 448 90461)**

**47TH STREET SOUTH & SANTA FE
(Sanitary Sewer Relocation)
(Project No. 468 84653)**

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for designing water and sewer relocation at 47th Street and I-135 and to perform the PROJECT tasks outlined in Exhibit A.

II. IN ADDITION, THE ENGINEER AGREES

- A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in the SCOPE OF SERVICES (Exhibit A).
- B. To attend meetings with the City and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.
- C. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.

- D. To save and hold CITY harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of ENGINEER, its agents, servants, employees, or subcontractors occurring in the performance of its services under this contract.
- E. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by ENGINEER and, where relevant to method of payment, to make such material available to the CITY.
- F. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply with the CITY'S Affirmative Action Program as set forth in Exhibit "B" which is attached hereto and adopted by reference as though fully set forth herein.
- G. To accept compensation for the work herein described in such amounts and at such periods as provided in Article IV and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with such work.
- H. To complete the services to be performed by ENGINEER within the time allotted for the PROJECT in accordance with Exhibit A; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond control of the ENGINEER.
- I. Covenants and represents to be responsible for the professional and technical accuracies and the coordination of all designs, drawings, specifications, plans and/or other work or material furnished by the ENGINEER under this agreement. ENGINEER further agrees, covenants and represents, that all designs, drawings, specifications, plans, and other work or material furnished by ENGINEER, its agents, employees and subcontractors, under this agreement, including any additions, alterations or amendments thereof, shall be free from negligent errors or omissions.
- J. ENGINEER shall procure and maintain such insurance as will protect the ENGINEER from damages resulting from the negligent acts of the ENGINEER, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this agreement. Such policy of insurance shall be in an amount not less than \$500,000.00 subject to a deductible of \$50,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall be not less than:

Workman's Compensation - Statutory
Employer's Liability - \$500,000 each occurrence.

Further, a comprehensive general liability policy shall be procured and maintained by the ENGINEER that shall be written in a comprehensive form and shall protect ENGINEER against all claims arising from injuries to persons (other than ENGINEER'S employees) or damage to property of the CITY or others arising out of any negligent act or omission of ENGINEER, its agents, officers, employees or subcontractors in the performance of the professional services under this agreement. The liability limit shall not be less than \$500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time ENGINEER starts any work under this agreement. In addition, insurance policies applicable hereto shall contain a provision that provides that the CITY shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.

- K. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The ENGINEER agrees to advise the CITY, in writing, of the person(s) designated as Project Manager not later than five (5) days following issuance of the notice to proceed on the work required by this agreement. The ENGINEER shall also advise the CITY of any changes in the person designated Project Manager. Written notification shall be provided to the CITY for any changes exceeding one week in length of time.

III. THE CITY AGREES:

- A. To furnish all available data pertaining to the PROJECT now in the CITY'S files at no cost to the ENGINEER. Confidential materials so furnished will be kept confidential by the ENGINEER.

- B. To provide standards as required for the PROJECT; however, reproduction costs are the responsibility of the ENGINEER, except as specified in Exhibit A.
- C. To pay the ENGINEER for his services in accordance with the requirements of this agreement.
- D. To provide the right-of-entry for ENGINEER'S personnel in performing field surveys and inspections.
- E. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The CITY agrees to advise, the ENGINEER, in writing, of the person(s) designated as Project Manager with the issuance of the notice to proceed on the work required by this agreement. The CITY shall also advise the ENGINEER of any changes in the person(s) designated Project Manager. Written notification shall be provided to the ENGINEER for any changes exceeding one week in length of time.
- F. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER in a timely fashion.

IV. PAYMENT PROVISIONS

- A. Payment to the ENGINEER for the performance of the professional services required by this agreement shall be based upon the ENGINEER'S actual costs and may be less than the estimated amount. Payment shall be full compensation for salary costs, expenses, overhead (overhead to be applied to straight-time salary cost only with premium overtime reimbursed at cost), profit, subcontracting and all other costs required in performing the work described herein. Overhead includes fringe benefits. The test of the allowability to be applied for this agreement shall be based on the provisions of the agreement and on the reasonableness of allocation of costs under generally accepted accounting principles and practices. Overhead costs shall be computed by multiplying an Overhead Factor times the actual salaries or wages paid to personnel assigned to the PROJECT. The Overhead Factor shall be 155.50 percent for the work required by this agreement. The ENGINEER shall submit to CITY the basis for the overhead rate prior to any payments.

Total payments to the ENGINEER for the preparation of the work associated with the PROJECT shall include the actual costs accruing in the performance of the professional services as outlined in this agreement which are estimated to amount to \$76,387.55 plus a fixed fee for profit of \$11,158.13 so that the total payments shall not exceed the sum of \$87,545.68 and shall generally be in accordance with the estimate provided as Attachment C. Profit shall not be applied to subcontractors, i.e., landscape architectural services, geotechnical services, etc.; or to direct expenses such as plan reproduction, CAD system services, etc.

During the progress of work covered by this agreement, partial payments may be made to the ENGINEER at intervals of one calendar month. The progress billings shall be supported by documentation acceptable to the City Engineer. Billings submitted during the progress of the work will be paid on the basis of the costs accrued to the PROJECT plus a fee for profit based upon a fixed percentage of the ENGINEER'S actual costs. Accumulated partial payments for the PROJECT shall not exceed eighty-five percent (85%) of the total fees for services prior to satisfactory completion of all work required by this agreement.

- B. When requested by the CITY, the ENGINEER will enter into a Supplemental Agreement for additional services related to the PROJECT such as, but not limited to:

1. Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings related to the PROJECT.
2. Additional design services not covered by the scope of this agreement.
3. Construction staking, material testing, inspection and administration related to the PROJECT.
4. A major change in the scope of services for the PROJECT.

If additional work should be necessary, the ENGINEER will be given written notice by the CITY along with a request for an estimate of the increase necessary in the not-to-exceed fee for performance of such additions. No additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.

V. THE PARTIES HERETO MUTUALLY AGREE:

- A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the ENGINEER'S inability to proceed with the work, or because the services of the ENGINEER are unsatisfactory;

PROVIDED, however, that in any case the ENGINEER shall be paid the reasonable value of the services rendered up to the time of termination on the basis of the provisions of this agreement, but in no case shall payment be more than the ENGINEER'S actual costs plus a fee for profit based upon a fixed percentage of the ENGINEER'S actual costs.

- B. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the ENGINEER'S services in accordance with this agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold ENGINEER harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection with the PROJECT.
- C. That the services to be performed by the ENGINEER under the terms of this agreement are personal and cannot be assigned, sublet or transferred without specific consent of the CITY.
- D. In the event of unavoidable delays in the progress of the work contemplated by this agreement, reasonable extensions in the time allotted for the work will be granted by the CITY, provided, however, that the ENGINEER shall request extensions, in writing, giving the reasons therefor.
- E. It is further agreed that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the parties hereto and their successors and assigns.
- F. Neither the CITY'S review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the ENGINEER under this agreement shall be construed to operate as a waiver of any right under this agreement or any cause of action arising out of the performance of this agreement.
- G. The rights and remedies of the CITY provided for under this agreement are in addition to any other rights and remedies provided by law.
- H. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this agreement as of the date first written above.

BY ACTION OF THE CITY COUNCIL

Carl Brewer, Mayor

SEAL:

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

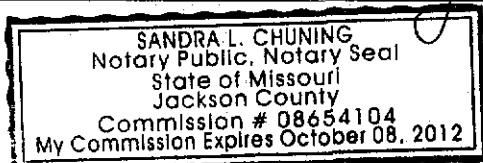
Gary Rebenstorf
Gary Rebenstorf, Director of Law

HNTB CORPORATION

[Signature]
(Name & Title)

ATTEST:

Sandra L. Chuning



**City of Wichita
City Council Meeting
December 15, 2009**

TO: Mayor and City Council

SUBJECT: Aquifer Storage and Recovery – Geochemistry Study and Water Quality Pilot Test Services - Supplemental Agreement

INITIATED BY: Water Utilities

AGENDA: Consent

Recommendation: Approve Supplemental Agreement No. 3 for Professional Services with CH2M Hill for a Geochemistry Study and Water Quality Pilot Test Services for the Aquifer Storage and Recovery (ASR) project.

Background: On July 10, 2007, the City Council approved and instructed staff to proceed with the projects necessary for Phase II of the Equus Beds ASR project. Phase II will consist of a 30 million gallon-per-day (MGD) Water Treatment Plant and Surface Water Intake Structure, as well as the pipelines, recharge and recovery wells, overhead power lines and a supervisory control and data acquisition system (SCADA) that will provide much of the backbone for future phases.

Analysis: The Equus Beds Aquifer is one of Wichita's main sources of water. In addition to Wichita, it supplies water for the communities in the vicinity, countless homesteads and irrigators. The ASR project will eventually inject up to 100 MGD into the aquifer which has been greatly dewatered since its expanded use in the 1940s and 1970s. An important aspect of the recharge project that must be carefully considered and addressed is the change in geochemistry of existing and recharged groundwater during the ASR process. If the area geochemistry is not understood, there is a high potential for negatively altering the existing groundwater and health of the aquifer. ASR projects across the U.S. have been halted after startup to address groundwater changes that could have been avoided by properly working with the existing geochemistry.

CH2M Hill initially designed the SCADA and overhead power lines. Their expertise in the field of ASR geochemistry and recharge wells brought them into the Recharge and Recovery Well project as peer reviewers. Following that, they became the team in charge of the Diversion Well Study which will help define future phases of ASR. Supplemental Agreement No. 3 will allow CH2M Hill to study the geochemistry in the highest risk portions of the Equus Beds. They will then design a pilot study to determine the extent of the effects of recharge in the aquifer and the best practices to maintain the aquifer's current healthy state.

Financial Considerations: The estimated cost for the study and the associated pilot and field work is \$219,480. Funding is available in CIP W-549, Water Supply Plan, Phases II, III and IV, which has adequate funding for these services.

Goal Impact: The project will help to ensure efficient infrastructure by providing for the development of future water supplies.

Legal Considerations: The Supplemental Agreement has been approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the City Council approve Supplemental Agreement No. 3 and authorize the necessary signatures.

Attachments: Supplemental Agreement No. 3 for Professional Services with CH2M Hill, Inc.

SUPPLEMENTAL AGREEMENT NO. 3

TO THE

AGREEMENT FOR PROFESSIONAL DESIGN SERVICES

BETWEEN

THE CITY OF WICHITA, KANSAS HEREINAFTER CALLED "CITY"

AND

CH2M HILL, INC. HEREINAFTER CALLED "CONSULTANT"

FOR

GEOCHEMISTRY STUDY AND WATER QUALITY PILOT TEST SERVICES
ASSOCIATED WITH INTEGRATED LOCAL WATER SUPPLY PLAN
IMPLEMENTATION

WITNESSETH:

WHEREAS, there now exists a agreement between the two parties covering professional design services for Process Control and SCADA implementation of which the well technical advisory services are a part, to be provided by the CONSULTANT in conjunction with the implementation of the Integrated Local Water Supply Plan.

WHEREAS, there now exists a supplemental agreement (Supplemental Agreement No. 1) with CONSULTANT to provide geochemistry evaluation services in conjunction with the implementation of the Integrated Local Water Supply Plan.

WHEREAS, Paragraph VI.C. of the above referenced Agreement provides that additional services not covered by the original scope of the agreement and additional compensation be paid on the basis of a Supplemental Agreement duly entered into by the parties, and

WHEREAS, it is the desire of both parties that the CONSULTANT provide additional services required for the PROGRAM and receive additional compensation (as revised herein):

NOW THEREFORE, the parties hereto mutually agree as follows:

A. PROJECT DESCRIPTION

The Scope of Work to be provided by CONSULTANT for the performance of the services described by this supplemental agreement is described in detail in Exhibit A. The following provides a brief description of the services to be provided by the

CONSULTANT. Due to the scale of the Aquifer Storage and Recharge (ASR) Phase II Program, a part of the Integrated Local Water Supply Plan, a careful analysis of the compatibility of the groundwater, the aquifer matrix, and the water to be injected is warranted to identify adverse geochemical changes that could occur in the aquifer during current and future ASR operations. CONSULTANT has completed the initial geochemical analysis, provided for in Supplemental Agreement No. 1. The findings of this analysis warrant a presentation by CONSULTANT to stakeholders and regulatory agencies described in detail in Exhibit A, Task 1. In addition, CONSULTANT will plan and design water quality pilot test(s) to evaluate water quality impacts of mixing native groundwater, the aquifer matrix, and recharge water, as described in detail in Exhibit A, Task 2. The estimated budget for these services is summarized in Exhibit B, attached hereto.

B. PAYMENT PROVISIONS

Payment to the CONSULTANT for the performance of the services described by this supplemental agreement shall be in accordance with Section VI of the original Agreement, and shall not exceed the amount designated in this Supplemental Agreement.

C. PROJECT SCHEDULE

The project schedule for the services described by this supplemental agreement will require 10 weeks to complete from date of supplemental agreement.

D. PROVISIONS OF THE ORIGINAL AGREEMENT

The parties hereunto mutually agree that all provisions and requirements of the existing Agreement, not specifically modified by this Supplemental Agreement, shall remain in full force and effect.

IN WITNESS WHEREOF, the CITY and the CONSULTANT have executed this Supplemental Agreement No. 3 as of this _____ day of _____ in the year _____.

CITY OF WICHITA

By: _____
Carl Brewer, Mayor

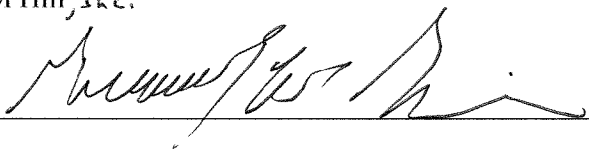
ATTEST:

By: _____
Karen Sublett, City Clerk

APPROVED AS TO FORM

By: _____
Gary Rebenstorf, Director of Law

CH2M Hill, Inc.

By:  _____

Title: DESIGNATED MANAGER

Well Technical Advisory Services Supplemental Agreement No. 3

The Agreement for Professional Design Services between the City of Wichita, Kansas (City) and CH2M HILL, INC. (CH2M HILL) is hereby amended by this Supplemental Agreement No. 3 to provide additional well technical advisory services.

Project Overview

A Geochemistry Study was initially performed to describe the naturally-occurring geochemical conditions in the subsurface beneath the City of Wichita's (City's) wellfield that could be changed by recharging water as a part of the Aquifer Storage and Recovery (ASR) Program. The results of the geochemistry study also included identifying strategies for managing these potential changes so that there are not adverse impacts to the aquifer.

This scope of work has been prepared to: (1) finalize and present the findings of the Geochemistry Study to the Groundwater Management District 2 (GMD2) and, possibly, the Kansas Department of Health (KDHE); and, (2) further define the strategies for managing the potential changes through a pilot study program. The following tasks will be performed under Supplemental Agreement No 3.

Task 1 – Geochemistry Study Report and Presentation

The purposes of this task are to finalize the Geochemistry Study Report, and to prepare and deliver the results of this report in a presentation to the GMD2 and, possibly, KDHE.

Geochemistry Study Report

The City has received written comments on the August 2009 draft report from Andy Ziegler/USGS and Carolyn McGinn. CH2M HILL participated in a conference call with Andy on October 13, 2009, and a meeting with R.W. Beck on October 16, 2009, to evaluate these comments. CH2M HILL will address the written comments, as well as the verbal comments received at the October 16th meeting. CH2M HILL will prepare and deliver a final Geochemistry Report to R.W. Beck and the City.

GMD2 Presentation

As part of the City's permitting strategy, CH2M HILL will present the results of the Geochemistry Study to the GMD2 Board at its November 10, 2009 meeting. Andy Ziegler/USGS will present existing conditions in the local aquifer. CH2M HILL's presentation will focus on the Geochemistry Study and the City's next steps. CH2M HILL will attend and participate in a presentation practice session in Wichita on November 9, 2009.

KDHE Meeting

If requested, one person from CH2M HILL will travel to Topeka, Kansas, for one day to attend and participate in a meeting with KDHE to discuss the Geochemistry Study.

Deliverables

- One final Geochemistry Study Report in electronic format.
- Five hard copies of the final Geochemistry Study Report for the City and Program Manager.
- One draft presentation to be reviewed by the City, R.W. Beck, and Andy Ziegler; comments will be incorporated into one final presentation delivered in electronic format.
- Presentation will be graphic-rich.

Assumptions

- Final report is delivered in electronic form to R.W. Beck on October 19, 2009.
- GMD2 presentation will be approximately 20 minutes long and will be presented by Dale Gabel from CH2M HILL on November 10, 2009 in Halsted, Kansas.
- Dick Glanzman from CH2M HILL will attend the GMD2 meeting in Halsted and will be prepared to answer technical questions, if they arise.
- Rebecca Carovillano from CH2M HILL will travel to Wichita on November 9, 2009 to help prepare the presentation team.
- Dale Gabel from CH2M HILL will, if requested, travel to Topeka to discuss findings of the geochemistry evaluation, with KDHE.

Task 2 – Water Quality Pilot Test

The purpose of this task is to plan and design the water quality pilot test(s) recommended in the October 2009 Geochemistry Study Report for the ASR Program. The pilot testing will be performed to evaluate the water quality impacts of mixing, in situ, native groundwater with recharge water whose water quality mirrors, as is required, the water that will be produced by the Phase II water treatment plant currently under design and construction.

Subtask 2.1 - Testing Plan

CH2M HILL will evaluate potential testing plans by conducting the following activities:

- Review existing wells and water quality data to select the optimum wells for testing, number and location.
- Develop testing protocols, including the number of tests (e.g., one or more than one), the duration of the testing cycles (e.g., 1-day, 7-day, or others), water quality sampling before, during and after the testing, number of analyses, field sampling plan and equipment required.
- Visit the well(s) into which water will be recharged and extracted during the tests and determine necessary retrofits and modifications.

- Identify the details of testing using two source water options - (1) water from the Phase I water treatment plant, and (2) groundwater from the existing wells. Identify the potential challenges and contingencies for their implementation.
- Identify which water chemistry constituents are important for the testing and design the recharge around these constituents.
- Determine the treatment and equipment needs for the two source water options so that the water quality of the water mirrors, as is required, the anticipated water quality of water produced by the Phase II water treatment plant.
- Determine permitting requirements for injecting water into the aquifer.
- Determine land access requirements, if any.
- Determine discharge options (e.g., location and permitting) of the water withdrawn after recharge.
- Develop conceptual cost estimates and implementation schedules.

CH2M HILL will meet with R.W. Beck to discuss the alternative testing plans and their respective conceptual costs and schedules, and define a path forward.

Deliverables

- Alternatives matrix that presents options (including conceptual cost estimates and implementation schedules) for conducting water quality pilot tests during 2010
- Meeting minutes documenting decisions made about the path forward

Subtask 2.2 - Design

For the agreed upon testing plan, CH2M HILL will complete a preliminary and final design for each element (source water, treatment, recharge well(s) modifications, conveyance, and discharge), and develop cost and implementation schedule estimates.

The following activities will be performed:

- Document the basis of design for the well(s) to be tested and the treatment needed to change the source water quality to mirror, as is required, that of the Phase II water treatment plant water in a technical memorandum.
- Document the pilot test details (e.g., recharge and discharge rates, duration, volume, water quality sampling, and discharge location) in a technical memorandum.
- Prepare preliminary designs of the necessary wellhead modifications, temporary piping, conveyance piping, and treatment facilities.
- Prepare implementation costs and schedules for wellhead modifications, treatment, conveyance, and testing.

CH2M HILL will meet with R.W. Beck and the City to review the preliminary designs and implementation cost estimate and schedule. CH2M HILL will incorporate comments into

the final design. After preparing the final design, CH2M HILL will meet with KDHE and GMD2 to gain consensus on the pilot study.

Deliverables

- Technical Memorandum describing the basis of design for the pilot testing and wellhead modifications. The preliminary drawings and specifications will be attached as appendices.
- Technical Memorandum describing the basis of design for the treatment and/or water conditioning needed. The preliminary drawings and specifications will be attached as appendices.
- Draft design report with preliminary cost estimates, preliminary schedules, and draft final drawings and specifications attached as appendices. Both the wellhead pilot testing and treatment equipment requirements will be compiled into one report.
- Final design report with final cost estimate, final schedule and final drawings and specifications attached as appendices. The final design documents will not be bid documents.

Assumptions

- Three meetings with R.W. Beck will be held in Denver, up to three people from CH2M HILL will attend each meeting.
- One, four-day-trip to Wichita for Kevin Bral and Lindsay Atkinson, both of CH2M HILL.
- Assuming work can begin on Task 2 during the first week in November, the activities will be completed by December 31, 2009.
- One, two-day-trip to meet with the City in Wichita, up to two people from the team will attend.
- Up to two meeting(s) will be held with KDHE & GMD2 to gather stakeholder feedback on pilot study. For planning purposes one meeting will be a conference call and one meeting will be held in Wichita. Up to two people from CH2M HILL will attend.
- No permitting activities are included.
- It is anticipated that up to five (5) specification sections (Summary of Work, Chemical Injection, Piping, Valves/Mechanical, Pricing Schedule)
- It is anticipated that up to 6 drawings will be required for the preliminary and final designs (Cover sheet, Legend/Index/Notes, Wellhead Plan/Profile, Treatment Plan/Profile, detail sheet for wellhead, detail sheet for Treatment).
- It is assumed that the well retrofit work will be completed by working interactively with Layne Christensen Company and that formal Contract Documents suitable for bidding will not be provided.

Schedule

The Task 1 activities will be completed by November 2009. The Final Geochemistry Study Report will be completed by October 19, 2009, and the GMD2 presentation will occur on November 10, 2009.

Assuming work can begin on Task 2 during the first week in November, the Task 2 activities described will be completed by December 31, 2009. To meet the goal of testing during 2010, qualified contractors will be contacted and readied to begin the work following completion of this scope of work.

Budget

Compensation will be on a time and materials basis in accordance with the contract terms. Labor hourly billing rates for Task 1 will be based on 2009 rates in the Technical Advisory contract and labor hourly billing rates for Task 2 will be based on the 2009 rates in the Diversion Wells contract. Expenses will include actual direct costs and subcontractor costs.

The budget for completing the tasks described above is \$219,480. The breakdown between labor and expenses for this estimate is presented in the following table.

Task	Total Labor Cost (1)	Total Expenses	Total Project Cost
1 - Geochemistry Report and Presentation	\$ 33,970	\$ 6,397	\$ 40,367
2 - Water Quality Pilot Test			
-Planning	\$ 56,695	\$ 10,177	\$ 66,872
-Design	\$ 99,824	\$ 12,417	\$ 112,241
Subtotal WQ Pilot Test	\$ 156,519	\$ 22,594	\$ 179,113
Total Project	\$ 190,489	\$ 28,991	\$ 219,480

**City of Wichita
City Council Meeting
December 15, 2009**

TO: Mayor and City Council

SUBJECT: Change Order: Old Town Lighting (District VI)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the change order.

Background: On April 7, 2009, the City Council approved a construction contract with Phillips Southern Electric Company to improve outdoor lighting in Old Town. In completing the project, additional work is necessary that requires a change order.

Analysis: The poles specified for this project were the same pole manufacture and part number used to replace the poles on east Douglas a few years ago by city maintenance crews. Prior to letting this project, one of the east Douglas poles and fixtures were installed in Old Town to show a comparison between the two fixtures. The light was installed on an existing base without any modification. Once the contractor began removing poles it was discovered that the old light fixtures had various different bolt patterns for the attaching base plates. Drilling the existing base plates is the least expensive option for mounting the specified light pole, which is the new standard. A change order has been prepared for the cost of the additional work. Funding is available within the project budget.

Financial Considerations: The total cost of the additional work is \$29,383 with the total paid by Old Town tax increment funding. The original contract amount is \$578,415. This change order represents 5.08% of the original contract amount.

<u>Item</u>	<u>Negot'd/Bid</u>	<u>Qty</u>	<u>Unit Price</u>	<u>Extension</u>
ADD				
Drill Base Plate	Negot'd	160 EA	@ \$183.64	= \$29,382.40

Goal Impact: This project addresses the Efficient Infrastructure goal by improving lighting in Old Town.

Legal Considerations: The Law Department has approved the change order as to legal form. The change order amount is within the 25% of construction contract cost limit set by City Council policy.

Recommendation/Action: It is recommended that the City Council approve the change order and authorize the necessary signatures.

Attachments: Change order.



To: Phillips Southern Electric
Change Order No.: 1
Purchase Order No.: 930355
CHARGE TO OCA No.: 794066

Project: Old Town Lighting (Phase 1)
Project No.: 472-84793
OCA No.: 794066
PPN: 437010

Please perform the following extra work at a cost not to exceed \$29,382.40

Additional Work: Drill out base plates for required light fixtures.

Reason for Additional Work: Old light fixtures had various different bolt patterns for the attaching base plates, so drilling the existing base plates is the least expensive options for mounting the specified light pole fixture, which is the new standard.

Item #1 – Drill Base Plate to match existing bolt pattern.

Item	Negot'd/Bid	Qty	Unit Price	Extension
ADD				
Drill Base Plate	Negot'd	160 EA @	\$183.64	= \$29,382.40

CIP Budget Amount: \$1,365,000.00

Original Contract Amt.: \$578,414.60

Consultant: Staff

Current CO Amt.: \$29,382.40

Total Exp. & Encum. To Date: \$694,652.30

Amt. of Previous CO's: \$0.00

CO Amount: \$29,382.40

Total of All CO's: \$29,382.40

Unencum. Bal. After CO: \$640,965.30

% of Orig. Contract / 25% Max.: 5.08%

Adjusted Contract Amt.: \$607,797.00

Recommended By: James Wagner, P.E.

Approved:

Greg Baalman, P.E. Date
Construction Engineer

Jim Armour, P.E. Date
City Engineer

Approved:

Approved:

Contractor Date

Chris Carrier, P.E. Date
Director of Public Works

Approved as to Form:

By Order of the City Council:

Gary Rebenstorf Date
Director of Law

Carl Brewer Date
Mayor

Attest: _____
City Clerk

**City of Wichita
City Council Meeting
December 15, 2009**

TO: Mayor and City Council

SUBJECT: Aquifer Storage and Recovery Phase II – Surface Water Intake and Treatment Plant Design-Build Contract – Task Order No. 2 Change Order No. 1

INITIATED BY: Water Utilities

AGENDA: Consent

Recommendation: Approve Change Order No. 1 to Design-Build Agreement, Task Order No. 2, with ABC Partners for the Aquifer Storage and Recovery (ASR) Phase II Surface Water Intake and Treatment Plant.

Background: Staff estimates that water demands will exceed the City's current water supply sometime between 2015 and 2020. On October 3, 2000, the City Council authorized projects to begin the development of new water supplies for the City. These projects will develop water supplies for the City's needs through the year 2050.

On July 10, 2007, City Council approved and instructed staff to proceed with the projects for Phase II of the Equus Beds ASR. On June 24, 2008, City Council approved a contract with CDM, Inc. to complete a 30-percent design for the ASR Phase II Water Treatment Plant. On October 28, 2008, the City Council approved: 1) Design-Build project delivery, 2) the selection criteria, 3) a prequalification resolution, and 4) authorized the Staff Screening and Selection Committee to seek requests for qualifications and proposals.

On April 7, 2009, City Council approved a Design-Build Contract with ABC Partners for a lump sum price of \$74,241,853. On October 13, 2009, the City Council approved Task Order No. 2 with ABC Partners which sets the negotiated guaranteed maximum price at \$73,338,950 which is \$902,903 less than the lump sum proposal. Task Order No. 2 also directed ABC Partners to proceed with completion of the project design and construction of the project.

Analysis: Task Order No. 1 awarded the Design-Build Contract to ABC Partners and authorized them to proceed with a 60-percent design. At 60-percent design, the City negotiated a guaranteed maximum price and authorized ABC Partners to proceed with completion of design and construction of the project. Change Order No. 1 is a no-cost change order. The change order approves a performance guarantee for the final treatment process which is final disinfection by means of Advanced Oxidization Process (AOP). The AOP system is being provided by Air Products.

Financial Considerations: Change Order No. 1 to Task Order No. 2 is a zero cost change order and does not affect the guaranteed maximum price of \$73,338,950. Funding for the project is included in Water Utilities CIP Project W-549, Water Supply Plan, which is for future water supply development.

Goal Impact: This project will ensure efficient infrastructure by providing reliable, compliant and secure utilities, and will assure that adequate water supplies are available in the future.

Legal Considerations: Change Order No. 1 has been reviewed by the Law Department and approved as to form.

Recommendations/Actions: It is recommended that the City Council approve Change Order No. 1 with ABC Partners and authorize the necessary signatures.

Attachments: There are no attachments.

City of Wichita
City Council Meeting
December 15, 2009

TO: Mayor and City Council Members

SUBJECT: Acquisition of 5802 East Wallace for the Gypsum Creek – Pawnee to Woodlawn Flood Control and Stream Restoration Project (District III)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: The 2005-2014 Capital Improvement Program adopted by the City Council includes funding for improving the natural channel of Gypsum Creek between Pawnee and Woodlawn by channel benching. The project requires the acquisitions of three parcels along the creek. This will allow for access to the creek and the ability to maintain the creek. The property located at 5802 East Wallace is one of the three parcels.

Analysis: 5802 E. Wallace is improved with a 1953, single-family ranch house. The home is comprised of 879 square feet on a 7,395 square foot site. The landowner accepted the appraised offer of \$64,000, or \$73 per square foot. In addition to the purchase price, the seller is eligible for relocation benefits. The house will be razed and the site maintained as open space.

Financial Considerations: \$89,800 is the requested budget for the acquisition of this parcel which includes \$64,000 purchase price, \$22,500 for reestablishment, \$2,300 for moving and \$1,000 for closing costs, title insurance and administrative fees. The funding source is General Obligation Bonds repaid by Stormwater Utility Funds.

Goal Impact: This project addresses the Ensure Efficient Infrastructure goal by improving stormwater conveyance and reducing flood losses.

Legal Considerations: The Agreement has been approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the City Council 1) Approve the Budget; 2) Approve the Real Estate Purchase Contract and 3) Authorize the necessary signatures.

Attachments: Real Estate purchase agreement and tract map.

REAL ESTATE PURCHASE CONTRACT

THIS AGREEMENT, Made and entered into this 16 day of November, 2009 by and between Mark W. Weddle, hereinafter referred to as "Seller," whether one or more, and the City of Wichita, Kansas, a municipal corporation, hereinafter referred to as "Buyer," whether one or more.


WITNESSETH: That for and in consideration of the mutual promises, covenants and payments hereinafter set out, the parties hereto do hereby contract to and with each other, as follows:

1. The Seller does hereby agree to sell and convey to the Buyer by a warranty deed for the following described real property, situated in Sedgwick County, Kansas, to wit:
Lot 5 except the east 59' and except condemnation case 55094 SEW, Block J, of the Reserve Addition.
2. The Buyer hereby agrees to purchase, and pay to the Seller, as consideration for the conveyance to him of the above described real property **the sum of Sixty Four Thousand Five Hundred Dollars (\$64,000) in the manner following, to-wit: cash at closing.**
3. Buyer requires and at its cost, will order a complete abstract of title certified to date, or a title insurance company's commitment to insure, to the above described real property, showing a merchantable title vested in the seller, subject to easements and restrictions of record is required. The Title Evidence shall be sent to Property Management Division for examination by the Buyer as promptly and expeditiously as possible, and it is understood and agreed that the Seller shall have a reasonable time after said Title Evidence has been examined in which to correct any defects in title.
4. A duly executed copy of this Purchase Agreement shall be delivered to the parties hereto.
5. It is further agreed by and between the parties hereto that all rentals, insurance (if policies acceptable to Buyer), H.O.W. and interest, if any, shall be adjusted and prorated as of the closing date.
6. Taxes shall be pro-rated for calendar year on the basis of 100% of taxes levied for the prior year.
7. The Seller further agrees to convey the above described premises with all the improvements located thereon and deliver possession of the same and in the same condition as they now are, reasonable wear and tear expected.
8. It is understood and agreed between the parties hereto that time is of the essence of this contract, and that this transaction shall be consummated on or before December 30, 2009.
9. Buyer agrees Seller is eligible for moving costs.
10. In the event an Owners title insurance policy is furnished, the total cost of the commitment to insure and the title insurance policy will be paid 0% by Seller and 100% by Buyer.
11. Buyer will pay 100% closing costs; the Seller 0%.

12. Closing will be held at Security First Title, 434 North Main, Wichita, KS.
13. Buyer and Seller agree date of possession will be no later than 30 days after closing. Extended time will be permitted in 30 day increments at a rental rate of \$525 per month.
14. Site Assessment
- A. At any time prior to the closing of this agreement, the buyer shall have the right to conduct or cause to be conducted an environmental site assessment and/or testing on the Property. If an environmental audit or test reveals the presence of a hazardous substance or waste, as defined by federal or state law, or that there has been a spill or discharge of a hazardous substance or waste on the Property, the buyer shall have the right to void this agreement upon notice to the seller, in which event neither party shall be under any further obligation to the other, with the exception that seller shall return to buyer any deposit made hereunder.
- B. The buyer or its agents shall have the right, without the obligation, to enter upon the Property prior to closing to undertake an environmental site assessment or testing of the Property, at the buyer's sole expense.
- C. Provided, however, buyer shall in no event be obligated to close before the completion of a site assessment made pursuant to Paragraphs A and B above. The buyer shall, if buyer determines a site assessment is necessary, exercise good faith in commencing and diligently completing such site assessment after this agreement is executed by all parties.
15. Paragraphs 7, 9 & 13 survive the closing.

WITNESS OUR HANDS AND SEALS the day and year first above written.

SELLER:



Mark W. Weddle

BUYER:

By Direction of the City Council

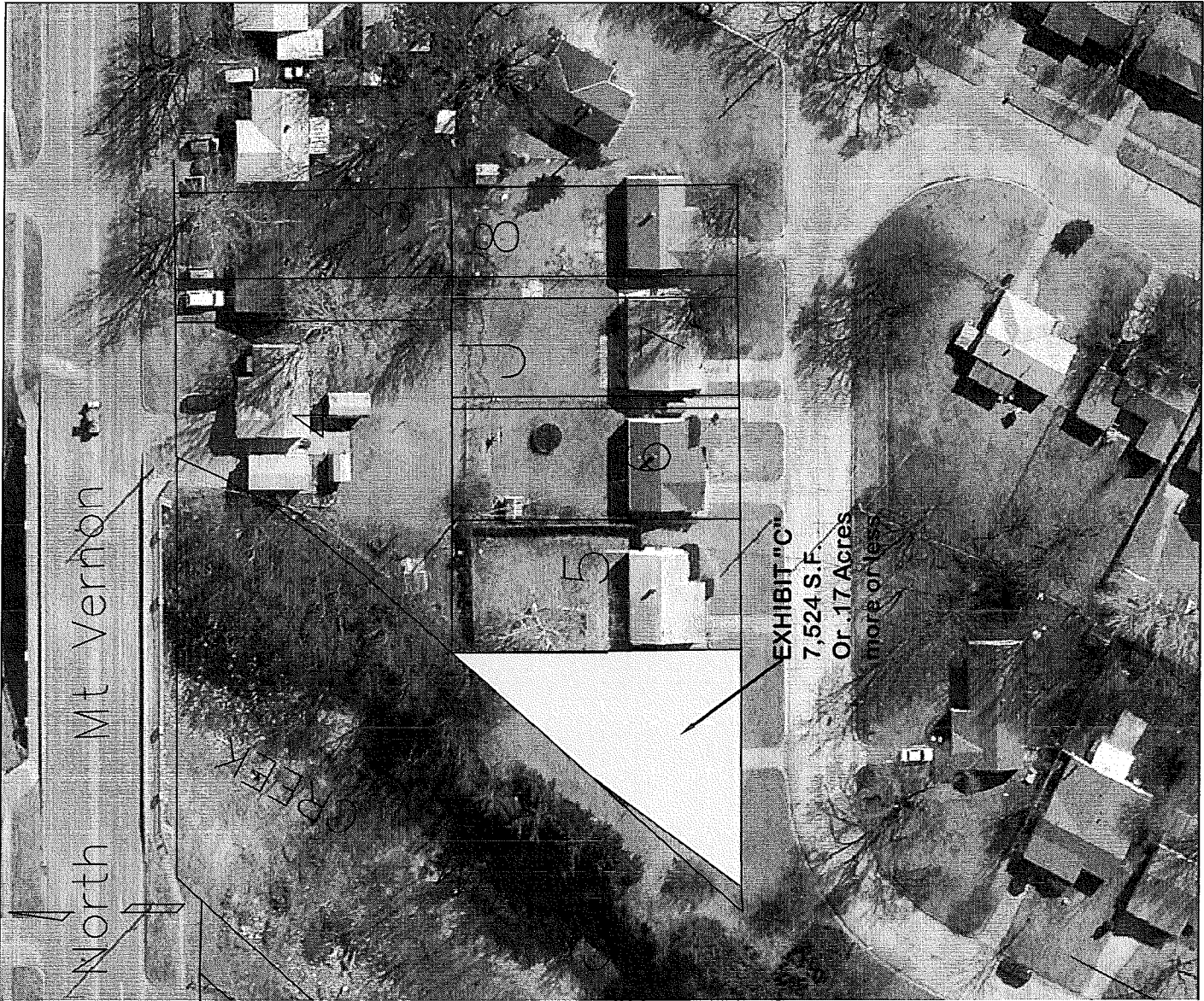
ATTEST:

Carl Brewer, Mayor

Karen Sublett, City Clerk

Approved as to Form:


Gary E. Rebenstorf, Director of Law



LEGAL DESCRIPTION:

Lot 5 EXC 59 feet &
EXC CCA 55094 SEW,
of the Reserve Addition

Said tract of land
contains 7,524 S.F. or
.17 Acres more or less

 CITY OF WICHITA PUBLIC WORKS	
EXHIBIT "C"	
TRACT MAP	
CITY OF WICHITA STORM WATER MANAGEMENT CITY HALL, 8TH FLOOR WICHITA, KS 67202	

C-24916-1, Weddle

CITY OF WICHITA
City Council Meeting
December 15, 2009

TO: Mayor and City Council Members

SUBJECT: Partial Acquisition of land in the Northeast Quarter of the Northeast Quarter of Section 16, Township 24 South, Range 2 West of the 6th Principal Meridian for the Integrated Local Water Supply Plan (Harvey County)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On August 3, 1993, City Council approved the Water Supply Plan prepared by Burns & McDonnell/MKEC Engineering Consultants. The Plan identified cost-effective water resource projects to meet the City's future water needs. On October 10, 2000, City Council approved the projects and implementation of the plan. One portion of the Water Supply Plan is the groundwater recharge project. The groundwater recharge includes the capture of above base flow water (water which is generated from rainfall runoff above the base river flow) in the Little Arkansas River to be transferred to and stored in the aquifer. The recovery and use of this water will meet future demands for the City of Wichita. Certain sites have been identified as necessary for the capture of above base flow water, locations for water treatment facilities, recharge/recovery wells, and recharge basins. One particular site at the southwest corner of SW 60th Street and Old Settlers Road in Halstead is required. It is necessary to acquire a 1.18 acre pipeline easement together with a 1.48 acre temporary construction easement along the western right-of-way line of Old Settlers Road.

Analysis: The subject property is developed with a farmstead site. The improvements are not impacted as a result of the project however; mature trees and fencing will be removed. The proposed 1.18 acre pipeline easement was valued at \$2,513, or \$2,130 an acre. The 1.48 acre temporary construction easement was valued at \$1,261, or \$852 an acre. The owner has agreed to accept the \$3,774 market analysis value.

Financial Considerations: A budget of \$4,624 is requested. The budget request includes \$3,774 for the acquisition, \$850 for title work, title insurance, closing costs, recording fees and administrative fees. Funding for this project is included in the Capital Improvement Plan (CIP) in W-549, Water Supply Plan Phase III, which has an available funding of over \$7.6 million.

Goal Impact: The acquisition of this parcel is necessary to ensure efficient infrastructure.

Legal Considerations: The Law Department has approved the contract and easements as to form.

Recommendation/Action: It is recommended that the City Council approve the agreements and authorize the necessary signatures.

Attachments: Real estate purchase agreement, tract map and aerial.

EASEMENT PURCHASE CONTRACT

THIS AGREEMENT, Made and entered into this ____ day of _____, 2009 by and between Carroll W. Clark, a single person, party of the First Part, hereinafter referred to as "Seller," whether one or more, and City of Wichita, KS, a Municipal Corporation, party of the Second Part, hereinafter referred to as "Buyer," whether one or more.

WITNESSETH: That for and in consideration of the mutual promises, covenants and payments hereinafter set out, the parties hereto do hereby contract to and with each other, as follows:

1. The Seller does hereby agree to sell and convey to the Buyer by a good and sufficient Permanent Easement and/or Temporary Construction Easement of the following described real property, situated in Harvey County, Kansas, to wit:

Permanent Easement (Pipeline – Parcel "A") All of the West 40 feet of the East 65 feet of the Northeast Quarter of Northeast Quarter of Section Sixteen (16), Township Twenty-four (24) South, Range Two (2) West of the 6th PM, Harvey County, Kansas. EXCEPT road right-of-way. The described easement contains 1.18 acres, more or less.

Temporary Easement (Construction – Parcel "B") All of the West 50 feet of the East 115 feet of the Northeast Quarter of Northeast Quarter of Section Sixteen (16), Township Twenty-four (24) South, Range Two (2) West of the 6th PM, Harvey County, Kansas. EXCEPT road right-of-way. The described easement contains 1.48 acres, more or less.

2. The Buyer hereby agrees to purchase and pay to the Seller the sum of Three Thousand Seven Hundred Seventy-four Dollars and No Cents (\$3,774.00) in the manner following, to-wit: cash at closing, which sum the Seller agrees is adequate compensation for such conveyance to Buyer of the above described real property, a temporary construction easement, any and all damages including but not limited to severance, crops at time of construction, crops for one year after initiation of construction, drainage and fencing.

3. A complete abstract of title certified to date, or a title insurance company's commitment to insure, to the above described real property, showing a merchantable title vested in the Seller, subject to easements and restrictions of record is required. The Title Evidence shall be sent to Property Management Division for examination by the Buyer as promptly and expeditiously as possible, and it is understood and agreed that the Seller shall have a reasonable time after said Title Evidence has been examined in which to correct any defects in title.

4. A duly executed copy of this Purchase Agreement shall be delivered to the parties hereto.


5. It is understood and agreed between the parties hereto that time is of the essence of this contract, and that this transaction shall be consummated on or before November 30 2009.

6. The Seller agrees to convey the above described premises with any and all personal property removed from within the easement area(s). Seller further agrees that any maintenance and use of said easement shall be in a manner that does not interfere with or endanger the construction, operations and maintenance of Buyer's improvements.

7. Possession to be given to Buyer on date of closing.
8. In the event an Owners title insurance policy is furnished, the total cost of the commitment to insure and the title insurance policy will be paid 0% by Seller and 100% by Buyer. Buyer will pay 100% closing costs.
9. In the event there are crop damages outside the easement area during construction or, crop damages resulting from the Buyer's other maintenance, operation, replacement or repairs to the pipeline, the Seller hereby agrees to file a claim with the City of Wichita, KS, City Clerk's Office, 455 North Main, Wichita, KS 67202, (316)268-4529.
10. Buyer and Seller hereby agree that Buyer, contractors and assigns will remove, store and reinstall topsoil removed from the easement corridor as a result of construction. Said topsoil, separate from bedding soil, will be temporarily stored within a temporary construction easement.
11. Buyer hereby agrees that the finished grade will match the existing grade as it currently exists upon completion of the project.
12. Site Assessment
- A. At any time prior to closing of this Agreement, the buyer shall have the right to conduct or cause to be conducted an environmental site assessment and/or testing on the property. If an environmental audit or test reveals the presence of a hazardous substance or waste, as defined by federal or state law, or that there has been a spill or discharge of a hazardous substance or waste on the property, the Buyer shall have the right to void this agreement upon notice to the Seller, in which event neither party shall be under any further obligation to the other, with the exception that Seller shall return to Buyer any deposit made hereunder.
- B. The Buyer or its agents shall have the right, without the obligation, to enter upon the property prior to closing to undertake an environmental site assessment or any other inspection of the property at the Buyer's sole expense.
- C. Provided, however, Buyer shall in no event be obligated to close before the completion of a site assessment made pursuant to this paragraph. If a site assessment cannot be completed prior to the closing date set herein, then the Buyer and Seller shall, unless Buyer chooses to void this agreement, close within ten (10) days of the completion of such site assessment. The Buyer shall, if Buyer determines that a site assessment is necessary, exercise good faith in commencing and diligently completing such site assessment.
13. Buyer agrees to indemnify and hold harmless Seller from any and all claims for personal injury and/or property damage resulting from any and all claims, expenses, suits or other costs relating to Buyer's occupancy of the subject property prior to closing. Buyer's occupancy of the subject property prior to execution shall be completely at the risk of Buyer and Seller shall bear no responsibility whatsoever for the actions of Buyer and/or its contractors or subcontractors for matters related to such occupancy.
14. Paragraphs 6, 9-11 and 13 shall survive the closing.

WITNESS OUR HANDS AND SEALS the day and year first above written.

SELLER:



Carroll W. Clark, a single person

BUYER:

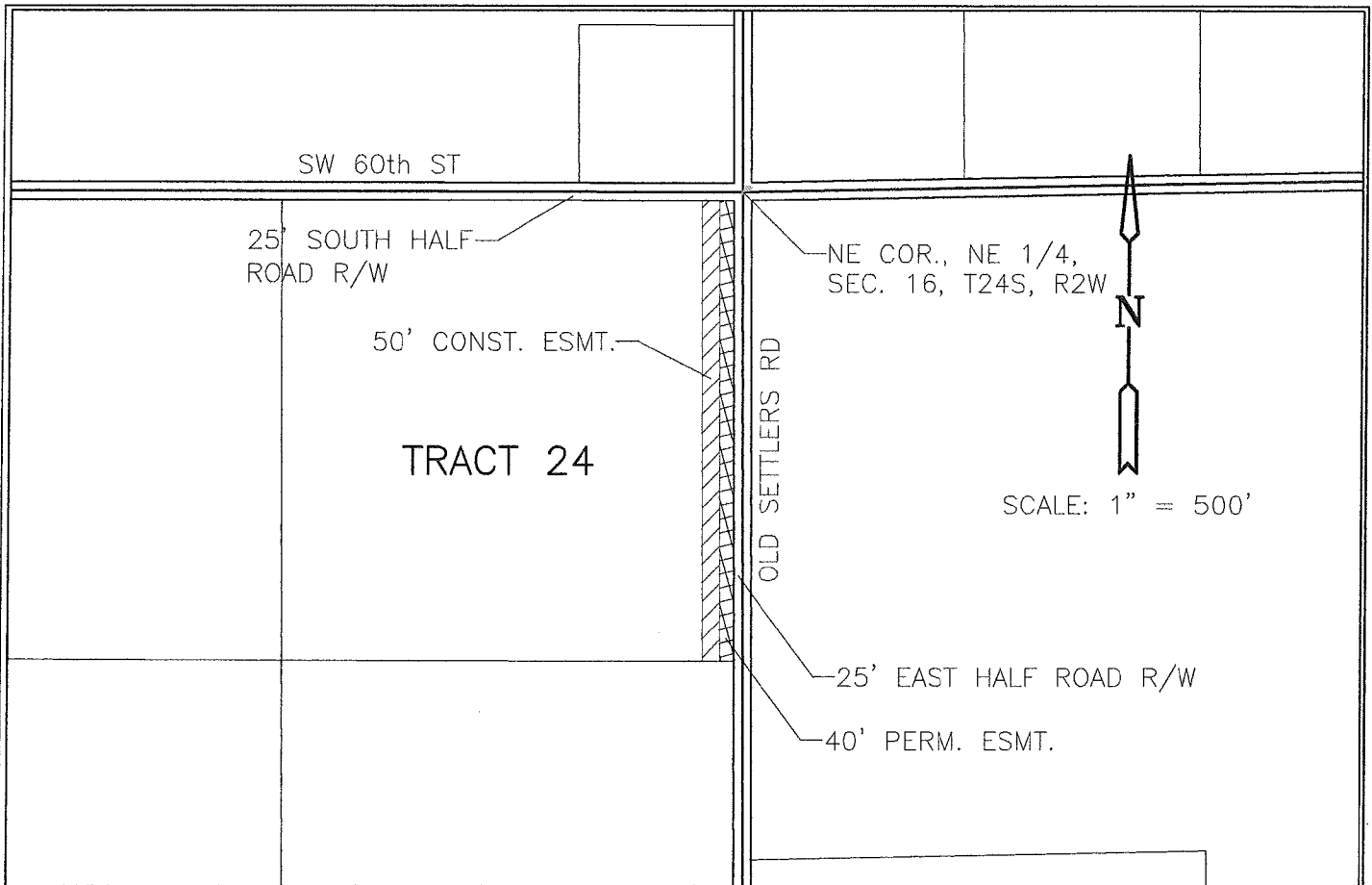
ATTEST:

Carl Brewer, Mayor

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law



EASEMENT:

All of the West 40 feet of the East 65 feet of the Northeast Quarter of Northeast Quarter of Section Sixteen (16), Township Twenty-four (24) South, Range Two (2) West of the 6th PM, Harvey County, Kansas, EXCEPT road right-of-way. The described easement contains 1.18 acres, more or less.

CONSTRUCTION EASEMENT:

All of the West 50 feet of the East 115 feet of the Northeast Quarter of Northeast Quarter of Section Sixteen (16), Township Twenty-four (24) South, Range Two (2) West of the 6th PM, Harvey County, Kansas. EXCEPT road right-of-way. The described easement contains 1.48 acres, more or less.

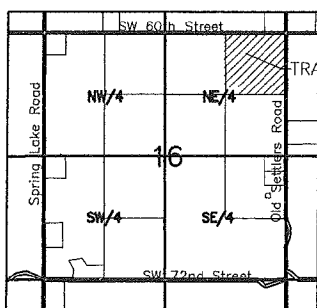
LEGEND:



Construction Easement



Easement



VICINITY MAP

OWNER:

CLARK, CARROLL W.



CDM

Camp Dresser & McGee
348 Riverway, Ste. 220
Wichita, KS 67203

Tel: (316) 680-6700

consulting • engineering • construction • operations



P&E & ASSOCIATES, INC.
CONSULTING ENGINEERS

THIS TRACT EXHIBIT DOES NOT CONSTITUTE A BOUNDARY SURVEY PLAT

GOLDEN PRAIRIE RD. TRANSMISSION MAIN
PROJECT NAME

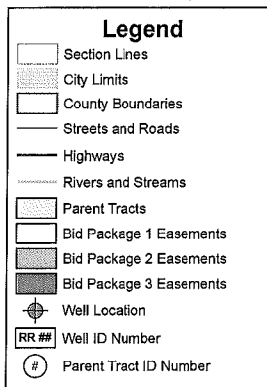
TRACT 24
SHEET TITLE

JGP DESIGN BY MLT DRAWN BY WPF CHECKED BY:

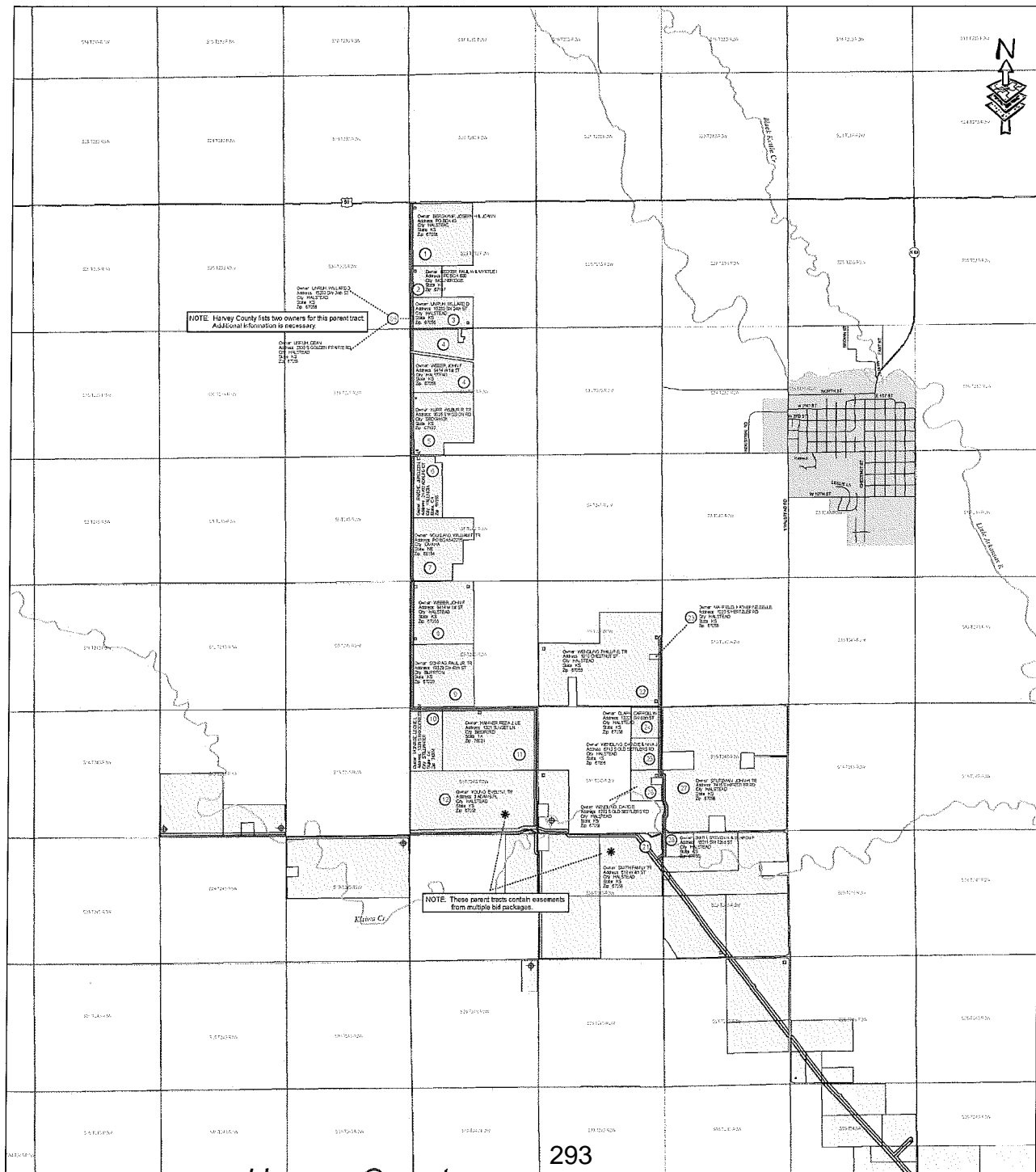
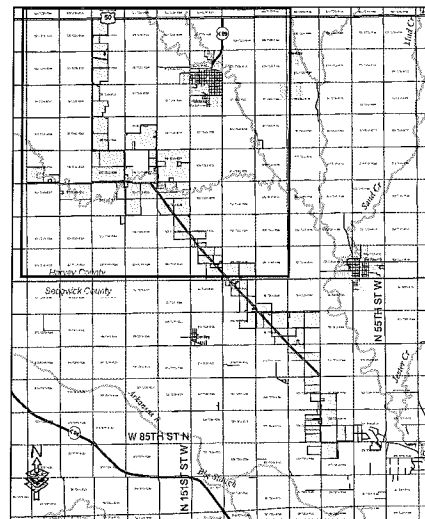
OCTOBER 2009 DATE 788014 JOB NO. 1 / 1 SHEET / OF



BID PACKAGE 3 Property Acquisition Map



Q:\200707685\Bent\Project GIS\ASR Bid Package2 Easements.mxd
Last saved 2/2/2009 by SAD
NAD_1983_StatePlane_Kansas_South_FIPS_1502_Feet
Projection: Lambert_Conformal_Conic
Professional Engineering Consultants, P.A.
303 S. Topolia
Wichita, KS 67202
Ph. (316) 262-2091
© 2008 Professional Engineering Consultants, P.A.



CITY OF WICHITA
City Council Meeting
December 15, 2009

TO: Mayor and City Council Members

SUBJECT: Acquisition of a portion of 653 South Bleckley Court for the Dry Creek Basin Project (District III)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition

Background: On June 13, 2006, City Council approved a creek channel improvement project to improve stormwater channel conveyance intended to reduce flooding. Several properties, all residential, were identified as being at or below a certain elevation and required for acquisition. In addition, partial acquisition of several properties was required to allow grading and berming along the creek. One such partial acquisition is from the property at 653 South Bleckley. It is a 1,658 square foot, four-bedroom, single-family ranch style house. The project requires 373 square feet of the site and impacts ancillary improvements such as fencing and paving but does not directly impact the house.

Analysis: The acquisition was appraised at \$2,900. This consists of \$746 (\$2 per square foot) for the land and \$2,154 for the site improvements. This amount was offered to the owner and accepted.

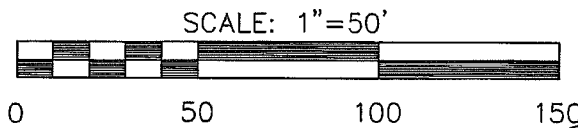
Financial Considerations: A budget of \$3,400 is requested consisting of \$2,900 for the acquisition and \$500 for insurance and costs associated with acquisition. The funding source is the Storm Water Utility.

Goal Impact: The acquisition of this parcel is necessary to ensure efficient infrastructure and flood control in this area.

Legal Considerations: The Law Department has approved the easement as to form.

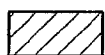
Recommendations/Actions: It is recommended that the City Council; 1) Approve the Budget; 2) Approve the permanent easement; and 3) Authorize the necessary signatures.

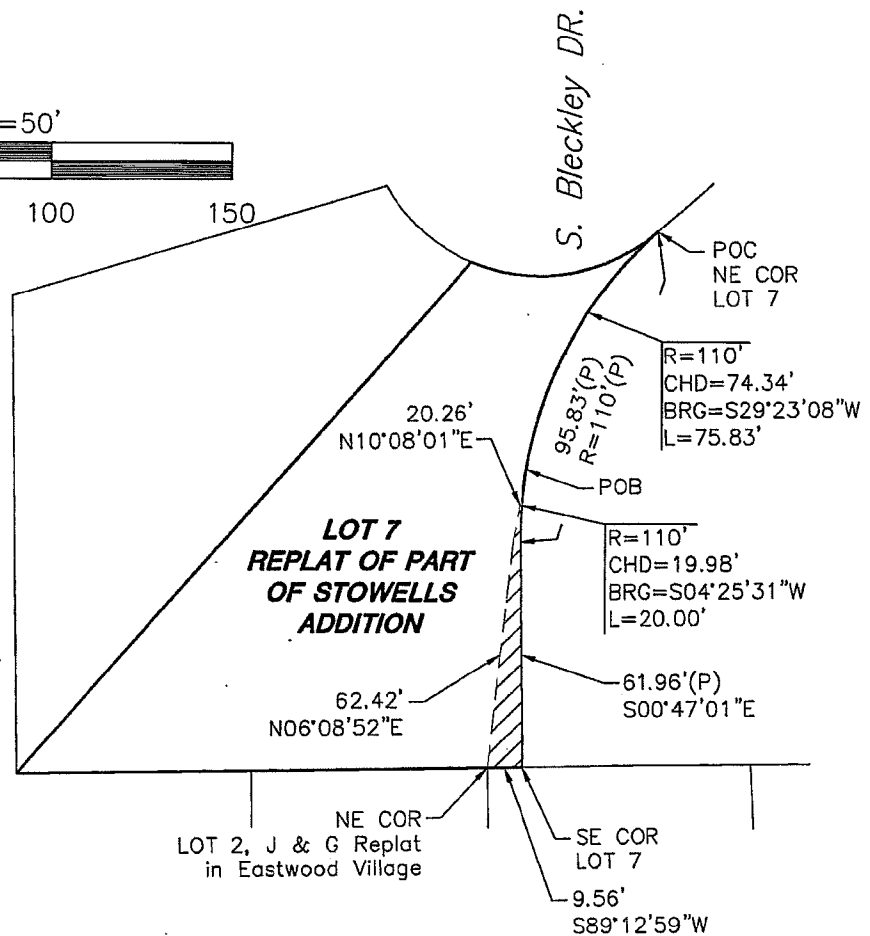
Attachments: Permanent easement, tract map and aerial map.



LEGEND:

POC - Point of Commencement
POB - Point of Beginning
P - Platted Distance

 Permanent Easement
=373 sq. ft.



LEGAL DESCRIPTION:

Permanent Easement

That part of Lot 7, Replat of Part of Stowell's Addition,
Wichita, Sedgwick County, Kansas, described as:

Commencing at the northeast corner of said Lot 7; thence
on assumed bearings southwesterly along the east line of
said Lot 7 on a curve to the left 75.83 feet having a radius
of 110 feet, chord bearing S29°23'08"W, 74.34 feet to the
Point of Beginning; thence continuing along said curve 20.00
feet with a radius of 110 feet, a chord bearing S04°25'31"W,
19.98 feet to a point of tangent; thence continuing along
said east line S00°47'01"E, 61.96 feet to the southeast
corner of said Lot 7; thence along the south line of said Lot
7, S89°12'59"W, 9.56 feet; thence N06°08'52"E, 62.42 feet;
thence N10°08'01"E, 20.26 feet to the Point of Beginning.

Said tracts of land contain 373 square feet

I:\MAP\2006\06501\dwg\tract map 100209\tract map

Owner:

BLUM, NANCY J
653 S. Bleckley Dr.
Wichita, KS 67218



DRY CREEK
LINCOLN ST. TO KELLOGG ST.
PROJECT NAME

TRACT MAP
SHEET TITLE

CWL	DSN	CWL
DESIGN BY:	DRAWN BY:	CHECKED BY:
OCT. 2009	06501	1 / 1
DATE	JOB NO.	SHEET/JOF

PERMANENT EASEMENT

THIS EASEMENT made this _____ day of _____, 2009 by and between Mark and Nancy J. Blum, husband and wife, party of the first part, herein referred to as "Grantor", and the City of Wichita, Kansas, a Municipal Corporation, party of the second part herein referred to as "Grantee".

WITNESSETH: That the said first parties, in consideration of the sum of Two Thousand Nine Hundred Dollars (\$2,900.00) and other good and valuable consideration, the receipt whereof is hereby acknowledged, do hereby grant and convey unto the said second party a perpetual right-of-way and easement for the public purposes including constructing, maintaining, and repairing water channel improvements, water utilities, drainage and any other public purpose deemed necessary, over, along and under the following described real estate situated in Sedgwick County, Kansas, to wit:

That part of Lot 7, replat of part of Stowell's Addition, Wichita, Sedgwick County, Kansas, described as:

Commencing at the northeast corner of said Lot 7; thence on assumed bearings southwesterly along the east line of said Lot 7 on a curve to the left 75.83 feet having a radius of 110 feet, chord bearing S29 degrees 23' 08" W, 74.34 feet to the Point of Beginning; thence continuing along said curve 20.00 feet with a radius of 110 feet, chord bearing of S 04 degrees 25' 31" W, 19.98 feet to a point of tangent; thence continuing along said east line S 00 degrees 47' 01" E, 61.96 feet to the southeast corner of said Lot 7; thence along the south line of said Lot 7, S 89 degrees 12' 59" W, 9.56 feet; thence N 06 degrees 08' 52" E, 62.42 feet; thence N 10 degrees 08' 01" E, 20.26 feet to the Point of Beginning.

And said second party is hereby granted the right to enter upon said premises at any time for the purpose of constructing, operating, maintaining, and repairing such.

IN WITNESS WHEREOF: The said first parties have signed these presents the day and year first written.

GRANTOR:

Mark Blum

Nancy J. Blum

STATE OF KANSAS)
) SS
SEDGWICK COUNTY)

Personally appeared before me a notary public in and for the County and State aforesaid Mark Blum and Nancy J. Blum, husband and wife, to me personally known to be the same persons who executed the foregoing instrument of writing and said person(s) duly acknowledged the execution thereof.

Dated at Wichita, Kansas, this _____ day of _____, 2009.

Notary Public

My Commission expires _____



653 S Bleckley



- ☐ Old Town
- ☐ Property
- ☐ Parcels
- Roads**
- ☐ State Highway
- ☐ US Federal Highway
- ☐ Interstate
- ☐ KTA
- ☐ Arterial
- ☐ Collector
- ☐ Minor
- ☐ Ramp
- Railroads**
- ☐ Quarter Section
- Waterways**
- ☐ Streams
- ☐ Parks
- ☐ Airports
- SDERASTER-S-**
- DEDATA.ORTH-**
- 01F**
- SDERASTER-S-**
- DEDATA.ORTH-**
- 0**
- City Limits**
- ☐ Andale
- ☐ Bel Aire
- ☐ Bentley
- ☐ Cheney
- ☐ Clearwater
- ☐ Colwich
- ☐ Derby
- ☐ Eastborough
- ☐ Garden Plain
- ☐ Goddard
- ☐ Hayville
- ☐ Kechi
- ☐ Maize
- ☐ Mount Hope

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Powered By GeoSmart, Inc.



Every reasonable effort has been made to assure the accuracy of the maps and associated data provided herein. This information is provided with the understanding that the data are susceptible to a degree of error, and conclusions drawn from such information are the responsibility of the reader. The City of Wichita makes no warranty, representation or guaranty as to the content, accuracy, timeliness or completeness of any of the data provided herein. Some data provided here and used for the preparation of these maps has been obtained from public records not created or maintained by the City of Wichita. The City of Wichita shall assume no liability for any decisions made or actions taken or not taken by the reader in reliance upon any information or data furnished hereunder. The user should consult with the appropriate departmental staff member, e.g. Planning, Parks & Recreation, etc. to confirm the accuracy of information appearing in the visual presentations accessible through these web pages.



CITY OF WICHITA
City Council Meeting
December 15, 2009

TO: Mayor and City Council Members

SUBJECT: Partial Acquisition of land at 1020 Hertzler Road, Halstead for the Integrated Local Water Supply Plan (Harvey County)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On August 3, 1993, City Council approved the Water Supply Plan prepared by Burns & McDonnell/MKEC Engineering Consultants. The Plan identified cost-effective water resource projects to meet the City's future water needs. On October 10, 2000, City Council approved the projects and implementation of the plan. One portion of the Water Supply Plan is the groundwater recharge project. The groundwater recharge includes the capture of above base flow water (water which is generated from rainfall runoff above the base river flow) in the Little Arkansas River to be transferred to and stored in the aquifer. The recovery and use of this water will meet future demands for the City of Wichita. Certain sites have been identified as necessary for the capture of above base flow water, locations for water treatment facilities, recharge/recovery wells, and recharge basins. One particular site at 1020 Hertzler Road in Halstead is required. It is necessary to acquire a .19 acre pipeline easement together with a .24 acre temporary easement for construction.

Analysis: The subject property is developed as a single-family residential site. The improvements are not impacted as a result of the project however; 9 mature trees will be removed. The owner has agreed to accept the market analysis offer of \$5,109. The proposed .19 acre pipeline easement was valued at \$405, or \$2,130 an acre. The .24 acre temporary construction easement was valued at \$204, or \$852 an acre. \$4,500 was allowed for the mature trees, or \$500 each tree.

Financial Considerations: A budget of \$5,959 is requested. The budget request includes \$5,109 for the acquisition, \$850 for title work, title insurance, closing costs, recording fees and administrative fees. Funding for this project is included in the Capital Improvement Plan (CIP) in W-549, Water Supply Plan Phase III, which has an available funding of over \$7.6 million.

Goal Impact: The acquisition of this parcel is necessary to ensure efficient infrastructure.

Legal Considerations: The Law Department has approved the contract and easements as to form.

Recommendation/Action: It is recommended that the City Council approve the agreements and authorize the necessary signatures.

Attachments: Real estate purchase agreement, tract map and aerial.

EASEMENT PURCHASE CONTRACT

THIS AGREEMENT, Made and entered into this ____ day of _____, 2009 by and between Katherine Belle Mayfield, a single person, party of the First Part, hereinafter referred to as "Seller," whether one or more, and City of Wichita, KS, a Municipal Corporation, party of the Second Part, hereinafter referred to as "Buyer," whether one or more.

WITNESSETH: That for and in consideration of the mutual promises, covenants and payments hereinafter set out, the parties hereto do hereby contract to and with each other, as follows:

1. The Seller does hereby agree to sell and convey to the Buyer by a good and sufficient Permanent Easement and/or Temporary Construction Easement of the following described real property, situated in Harvey County, Kansas, to wit:

Permanent Easement (Pipeline – Parcel “A”) All of the West 40 feet of the East 65 feet of the following described tract: a tract in the North Half of the Southeast Quarter of Section Nine (9), Township Twenty-four (24) South, Range Two (2) West of the 6th PM, Harvey County, Kansas, described as: Commencing at the Southeast Corner of the Southeast Quarter, North 00°00’ East along the East line of said Southeast Quarter, 1988 feet to the point of beginning; thence South 90°00’ West, 532.55 feet; thence North 00°00’ East, 210 feet; thence North 90°00’ East, 532.55 feet to the East line of said Southeast Quarter; thence South 00°00’ West along the East line of said Southeast Quarter, 210 feet to the point of beginning.

The described easement contains 0.19 acres, more or less.

Temporary Easement (Construction – Parcel “B”) All of the West 50 feet of the East 115 feet of the following described tract: a tract in the North Half of the Southeast Quarter of Section Nine (9), Township Twenty-four (24) South, Range Two (2) West of the 6th PM, Harvey County, Kansas, described as: Commencing at the Southeast Corner of the Southeast Quarter, North 00°00’ East along the East line of said Southeast Quarter, 1988 feet to the point of beginning; thence South 90°00’ West, 532.55 feet; thence North 00°00’ East, 210 feet; thence North 90°00’ East, 532.55 feet to the East line of said Southeast Quarter; thence South 00°00’ West along the East line of said Southeast Quarter, 210 feet to the point of beginning.

The described easement contains 0.24 acres, more or less.

2. The Buyer hereby agrees to purchase and pay to the Seller the sum of Five Thousand One Hundred Nine Dollars and No Cents (\$5,109.00) in the manner following, to-wit: cash at closing, which sum the Seller agrees is adequate compensation for such conveyance to Buyer of the above described real property, a temporary construction easement, any and all damages including but not limited to severance, crops at time of construction, crops for one year after initiation of construction, drainage and fencing.

3. A complete abstract of title certified to date, or a title insurance company's commitment to insure, to the above described real property, showing a merchantable title vested in the Seller, subject to easements and restrictions of record is required. The Title Evidence shall be sent to Property Management Division for examination by the Buyer as promptly and expeditiously as possible, and it is understood and agreed that the Seller shall have a reasonable time after said Title Evidence has been examined in which to correct any defects in title.

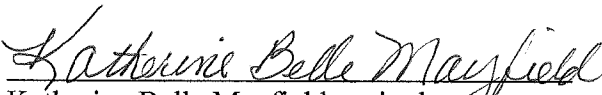
4. A duly executed copy of this Purchase Agreement shall be delivered to the parties hereto.
5. It is understood and agreed between the parties hereto that time is of the essence of this contract, and that this transaction shall be consummated on or before November 30, 2009.
6. The Seller agrees to convey the above described premises with any and all personal property removed from within the easement area(s). Seller further agrees that any maintenance and use of said easement shall be in a manner that does not interfere with or endanger the construction, operations and maintenance of Buyer's improvements.
7. Possession to be given to Buyer on date of closing.
8. In the event an Owners title insurance policy is furnished, the total cost of the commitment to insure and the title insurance policy will be paid 0% by Seller and 100% by Buyer. Buyer will pay 100% closing costs.
9. In the event there are crop damages outside the easement area during construction or, crop damages resulting from the Buyer's other maintenance, operation, replacement or repairs to the pipeline, the Seller hereby agrees to file a claim with the City of Wichita, KS, City Clerk's Office, 455 North Main, Wichita, KS 67202, (316)268-4529.
10. Buyer and Seller hereby agree that Buyer, contractors and assigns will remove, store and reinstall topsoil removed from the easement corridor as a result of construction. Said topsoil, separate from bedding soil, will be temporarily stored within a temporary construction easement.
11. Buyer hereby agrees that the finished grade will match the existing grade as it currently exists upon completion of the project.
12. Site Assessment
 - A. At any time prior to closing of this Agreement, the buyer shall have the right to conduct or cause to be conducted an environmental site assessment and/or testing on the property. If an environmental audit or test reveals the presence of a hazardous substance or waste, as defined by federal or state law, or that there has been a spill or discharge of a hazardous substance or waste on the property, the Buyer shall have the right to void this agreement upon notice to the Seller, in which event neither party shall be under any further obligation to the other, with the exception that Seller shall return to Buyer any deposit made hereunder.
 - B. The Buyer or its agents shall have the right, without the obligation, to enter upon the property prior to closing to undertake an environmental site assessment or any other inspection of the property at the Buyer's sole expense.
 - C. Provided, however, Buyer shall in no event be obligated to close before the completion of a site assessment made pursuant to this paragraph. If a site assessment cannot be completed prior to the closing date set herein, then the Buyer and Seller shall, unless Buyer chooses to void this agreement, close within ten (10) days of the completion of such site assessment. The Buyer shall, if Buyer determines that a site assessment is necessary, exercise good faith in commencing and diligently completing such site assessment.

13. Buyer agrees to indemnify and hold harmless Seller from any and all claims for personal injury and/or property damage resulting from any and all claims, expenses, suits or other costs relating to Buyer's occupancy of the subject property prior to closing. Buyer's occupancy of the subject property prior to execution shall be completely at the risk of Buyer and Seller shall bear no responsibility whatsoever for the actions of Buyer and/or its contractors or subcontractors for matters related to such occupancy.

14. Paragraphs 6, 9-11 and 13 shall survive the closing.

WITNESS OUR HANDS AND SEALS the day and year first above written.

SELLER:


Katherine Belle Mayfield, a single person

BUYER:

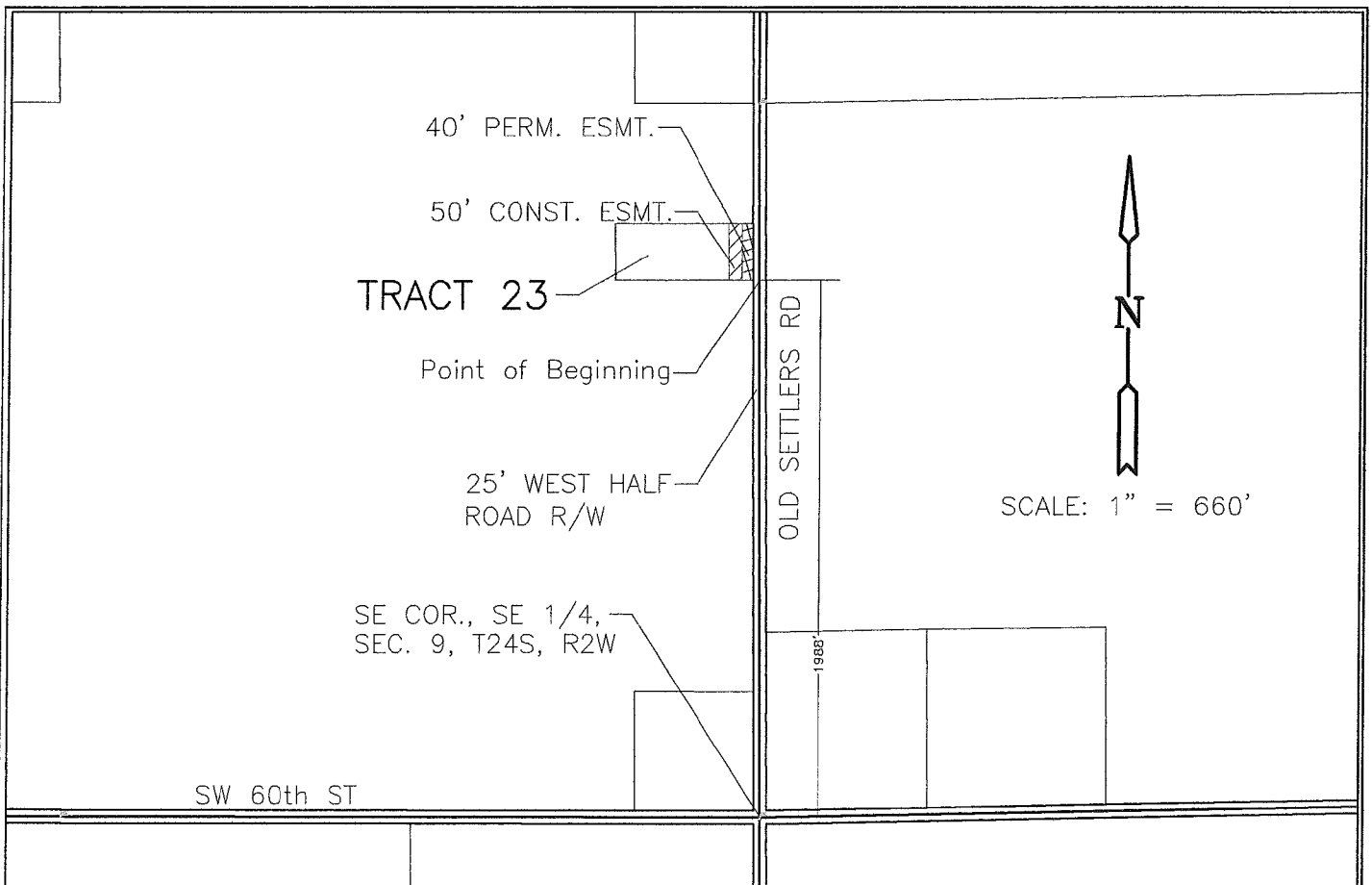
ATTEST:

Carl Brewer, Mayor

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law

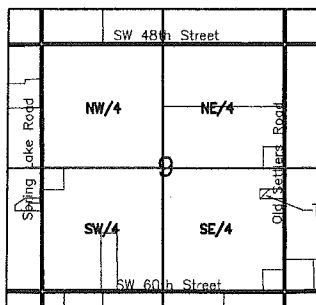


EASEMENT:

All of the West 40 feet of the East 65 feet of the following described tract: a tract in the North Half of the Southeast Quarter of Section Nine (9), Township Twenty-four (24) South, Range Two (2) West of the 6th PM, Harvey County, Kansas, described as: Commencing at the Southeast Corner of the Southeast Quarter, North 00°00' East along the East line of said Southeast Quarter, 1988 feet to the point of beginning; thence South 90°00' West, 532.55 feet; thence North 00°00' East, 210 feet; thence North 90°00' East, 532.55 feet to the East line of said Southeast Quarter; thence South 00°00' West along the East line of said Southeast Quarter, 210 feet to the point of beginning. The described easement contains 0.19 acres, more or less.

CONSTRUCTION EASEMENT:



All of the West 50 feet of the East 115 feet of the following described tract: a tract in the North Half of the Southeast Quarter of Section Nine (9), Township Twenty-four (24) South, Range Two (2) West of the 6th PM, Harvey County, Kansas, described as: Commencing at the Southeast Corner of the Southeast Quarter, North 00°00' East along the East line of said Southeast Quarter, 1988 feet to the point of beginning; thence South 90°00' West, 532.55 feet; thence North 00°00' East, 210 feet; thence North 90°00' East, 532.55 feet to the East line of said Southeast Quarter; thence South 00°00' West along the East line of said Southeast Quarter, 210 feet to the point of beginning. The described easement contains 0.24 acres, more or less.

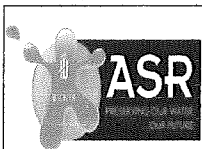


VICINITY MAP

OWNER:
MAYFIELD, KATHERINE BELLE

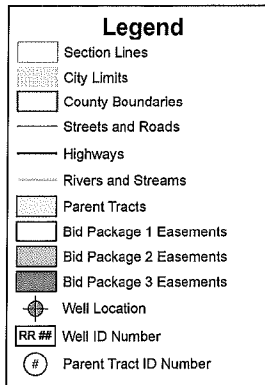
LEGEND:

-  Construction Easement
-  Easement

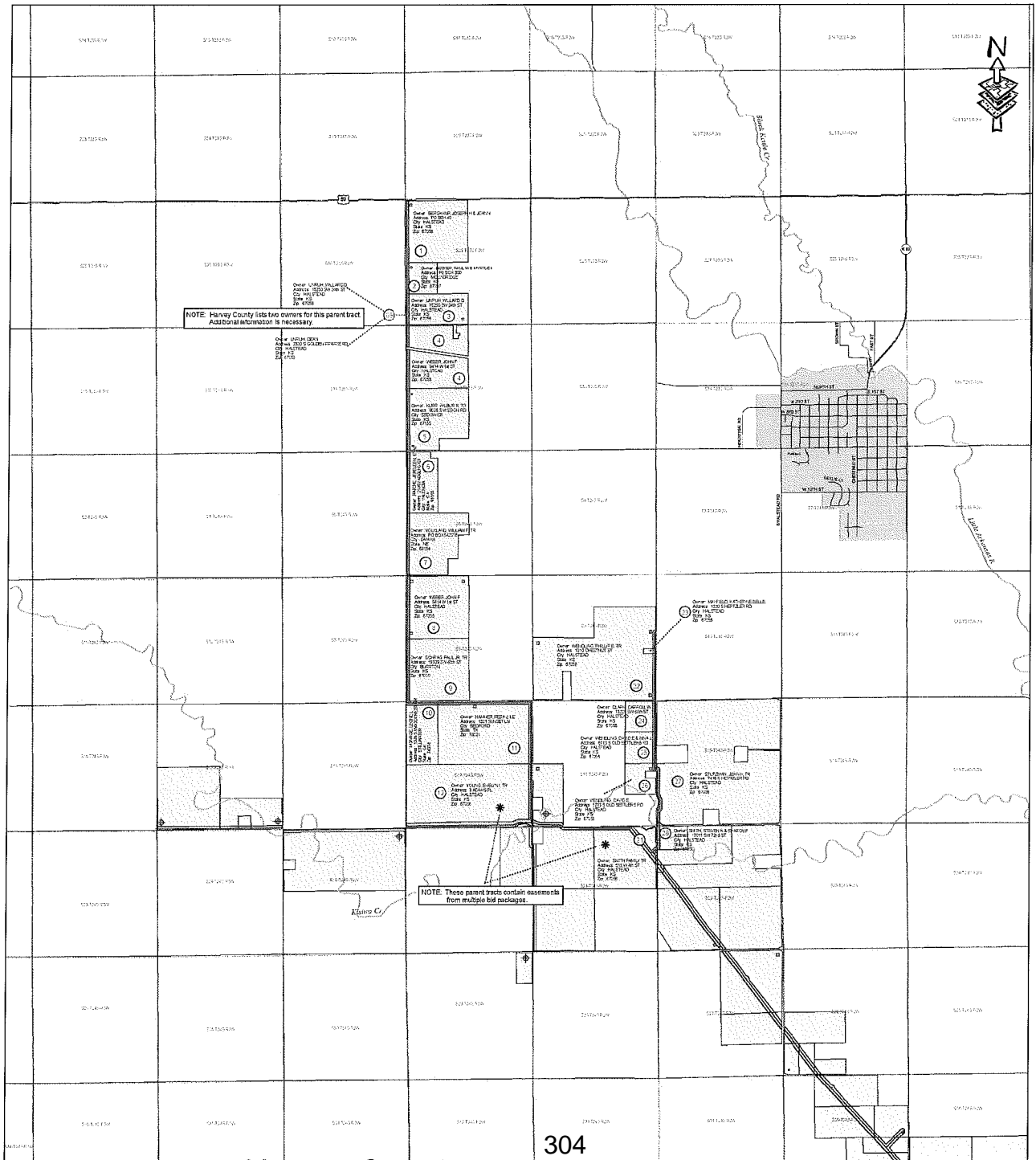
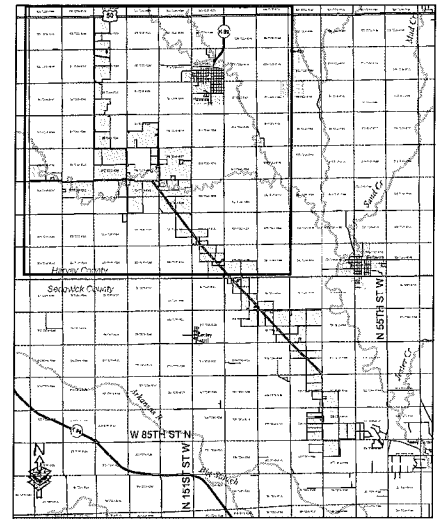
		<p><small>THIS TRACT EXHIBIT DOES NOT CONSTITUTE A BOUNDARY SURVEY PLAT</small></p>	
<p>CDM Camp Dresser & McKee 343 Riverway, Ste. 600 Wichita, KS 67203 Tel (316) 600-6700 consulting • engineering • construction • operations</p>		<p>POE & ASSOCIATES, INC. CONSULTING ENGINEERS</p>	
<p>GOLDEN PRAIRIE RD. TRANSMISSION MAIN PROJECT NAME</p>		<p>TRACT 23 SHEET TITLE</p>	
<p>JGP DESIGN BY</p>	<p>MLT DRAWN BY</p>	<p>WPF CHECKED BY</p>	<p>BY:</p>
<p>SEPTEMBER 2009 DATE</p>		<p>788013 JOB NO.</p>	
<p>1 / 1 SHEET / OF</p>			



BID PACKAGE 3 Property Acquisition Map



Q:\000707685\BentProject GIS\ASR Bid Package2 Easements.mxd
Last saved 2/2/2009 by SAD
NAD_1983_StatePlane_Kansas_South_FIPS_1502_Feet
Projection: Lambert_Conformal_Conic
Professional Engineering Consultants, P.A.
303 S. Topoka
Wichita, KS 67202
Ph. (316) 262-2091
© 2008 Professional Engineering Consultants, P.A.



City of Wichita
City Council Meeting
December 15, 2009

TO: Mayor and City Council

SUBJECT: Animal Services: ASPCA Grant for Equipment Purchase (District I)

INITIATED BY: Environmental Services

AGENDA: Consent

Recommendation: Approve grant application.

Background: As part of continuing animal shelter program improvement initiatives, the American Society for the Prevention of Cruelty to Animals (ASPCA) is offering grant funds of up to \$3,500. These funds can be used to purchase equipment for enhancing municipal animal shelter operations. If awarded to the City, Environmental Services will utilize these funds to purchase a computer and printer for use by shelter staff for logging in and tracking of animals. The grant money would also cover the cost of Information Technology (IT) charges through the end of 2010.

The grant application was submitted on December 1, 2009 in order to meet the deadline for potential funding. The grant application was approved by the City Manager to be submitted prior to Council's approval as allowed by Administrative Regulation (A.R.) 2.4 where delay would disqualify the grant.

Analysis: ASPCA Grants provide support to a variety of animal welfare organizations including cash awards to municipal animal shelters for enhancing outreach and services to the communities they serve. The grant funds being applied for would be used for the purchase of computer equipment. This equipment would help to enhance tracking and disposition of animals in the shelter that are brought in by field officers. This work station could also be used for transferring animals to the Kansas Humane Society (K.H.S.) for adoption. Currently, animals brought in by field officers have to be entered into computers located at the front customer service counter. KHS transfers are also performed in the customer service area. This new computer equipment would support services geared towards maximizing the number of animals released back to their owners or provided for adoption. The computer workstation would be located in an area of the shelter accessible to field officers and KHS adoption staff in order to further reduce customer service bottlenecks and waiting time for citizens at the shelter.

Financial Considerations: The maximum amount of funds available to the city will be \$3,500. There is no additional monetary cost to the city associated with the purchase of this equipment. City IT fees would be covered by the grant until the end of 2010. Beginning in 2011 the department would require \$1,500 annually for ongoing IT charges (at the current rate).

Goal Impact: The grant supports the goals for Safe and Secure Communities and Quality of Life.

Legal Considerations: The grant agreement will be reviewed by the Department of Law upon receipt for approval as to form and submitted to the Council for acceptance.

Recommendations/Actions: It is recommended that the City Council approve the grant application.

Attachments: A copy of the electronic grant application as submitted to the ASPCA on December 1, 2009.

Stage 1 of 1 Full Proposal for Animal Shelters and Spay/Neuter Groups

Organization

Please do not use all capital letters.

Please review the information below for accuracy and edit accordingly. You may return to your application at any time by clicking the "Save and Finish Later" button at the end of the application.

Organization Name

City of Wichita, Animal Services

Mailing Address

3303 N. Hillside

City

Wichita

State

KS

Postal Code

67219

Phone

No hyphens, e.g. 2128767700

3162688351

Fax

No hyphens, e.g. 2128767700

3162688390

Website (if applicable)

www.wichita.gov

Tax ID

48-6000653

Tax Status

Municipality/County

Organization Type

Shelter (municipal, private or non-profit)

Physical Address (if different than mailing address)

Include address, city, state and zip/postal code.

Same as Mailing

Current Year Budget

\$520,079

In what year was the facility built?

2009

In what year was the facility renovated?

New

Number of Full-time Staff

5

Number of Part-time Staff

2

Number of Current Active Volunteers

1

Maximum Holding Capacity for Cats

144

Maximum Holding Capacity for Dogs

166

Maximum Holding Capacity for Other Animals

15

If holding capacity is for animals other than cats or dogs, please list types of animals.

Maximum holding capacity for other: three small mammal cages, one large bird cage, one large reptile cage and one medium reptile cage.

Previous Year Disposition of Animals

(Total Numbers)

Cats Handled

3,151

Cats Adopted

276

Cats Returned to Owner

37

Cats Euthanized

2,838

Dogs Handled

6,028

Dogs Adopted

1,116

Dogs Returned to Owner

1,503

Dogs Euthanized

3,409

Other - specify type of animal

Animals classified as "other" are not tracked by type.

Other Handled

273

Other Adopted

80

Other Returned to Owner

18

Other Euthanized

175

Other - specify type of animal

Other Handled

Other Adopted

Other Returned to Owner

Other Euthanized

Percent of animals neutered before placement:

100

Youngest age that animals are spayed/neutered:

8

Lightest weight that animals are spayed/neutered:

2

Who is your contact person at the ASPCA for this request?

Ellen Taylor

Contacts

Primary Contact Person for this Request

Prefix

e.g. Ms., Mr., Dr.

Mr.

First Name

Don

Last Name

Henry

Suffix

<None>

Title

Environmental Services Manager

E-mail

dhenry@wichita.gov

Head of Organization (only if different than above)

Prefix

The Honorable

First Name

Carl

Last Name

Brewer

Suffix

<None>

Title

Wichita Mayor

E-mail

cbrewer@wichita.gov

Proposal

Request Information

Project Title

Please name your project, e.g. Mobile Spay/Neuter Clinic for Low-income Residents

Wichita Animal Shelter, Animal Tracking and Disposition Improvemnt

Request Amount

e.g. 1000

3500

Project Description

Provide a brief description of your funding needs in 250 words or less.

The City of Wichita opened the new Wichita Animal Shelter in April 2009. The shelter is collocated on a campus with the Kansas Humane Society with joint-operations designed to maximize the number of live releases, through owner reclaims and adoptions. In support of this, the city's shelter is designed to maximize efficiencies of animal control field and shelter operations. The grant funds being applied for would be used for the purchase of computer equipment. This equipment would help to enhance tracking and disposition of animals in the shelter that are brought in by field officers. This work station could also be used for transferring animals to the Kansas Humane Society for adoption. Currently, animals brought in by field officers have to be entered into computers located at the front customer service counter. KHS transfers are also performed in the customer service area. This new computer equipment would support services geared towards maximizing the number of animals released back to their owners or provided for adoption. The computer workstation would be located in an area of the shelter accessible to field officers and KHS adoption staff in order to enhance animal tracking and staff efficiencies, and reduce customer service bottlenecks and waiting time for citizens at the shelter.

Programs and Services

Briefly describe the types of programs your organization provides the community it serves (in 100 words or less).

The Wichita Animal Shelter (WAS) is a state licensed municipal shelter. WAS provides sheltering services to the citizens of Wichita, Sedgwick County (Sg. Co.) and other second and third tier cities within Sg. Co. WAS is the only full service government shelter in Sg. Co. WAS is collocated on the same campus with the Kansas Humane Society. WAS and KHS work together to maximize resources aimed at returning lost pets to owners and finding suitable homes for all adoptable animals.

Geographical Area Served

You may choose more than one.

KS

 <Select One>

 <Select One>

Type of Support

Equipment

Program Area

Please select the program area most closely aligned with this funding request.

Community Outreach-Shelter Outreach (Including Gov't Agencies)-Animal Control

Population Served

You may choose more than one.

Dogs

 &Cats

 <Select One>

Collaborations

What other animal groups do you work with regularly? List the names.

Kansas Humane Society

Spay Neuter Kansas

Pet Adoption Listing Service (PALS)

Spay/Neuter Policy

Briefly describe your spay/neuter policy, program, and follow-up procedures in 100 words or less.

Animals impounded for running at large are required to be spayed-neutered at the owner's expense within thirty days of reclaim. Owners may elect to pay a onetime fee allowing the animal to remain intact (must not be picked up again RAL). A second offense warrants mandatory spay-neuter for that animal (within thirty days at the owners' expense). Any dog deemed dangerous for attacking or biting a person or other animal is required to be spayed or neutered at the owner's expense within thirty days. Animals determined to be adoptable are transferred to KHS and receive pre-adoption spay/neuter by KHS.

Vaccination Policy

For which diseases do you routinely vaccinate and test? At what point during the animal's stay do you vaccinate? Please describe in 100 words or less.

After meeting mandatory hold periods, adoptable animals are transferred to KHS and receive vaccinations per KHS protocol. WAS does not provide any vaccination services for impounded

animals. The City of Wichita requires all owned dogs, cats, and ferrets to be vaccinated for rabies.

What is your standard euthanasia procedure?

Sodium Pentobarbital

Yes

Route of Administration

I.V. injection.

Carbon Monoxide

Other

Other (Specify)

Performed by:

Veterinarian

In Shelter

Yes

At Veterinarian's Clinic

Staff

Yes

How many staff perform euthanasia?

5

How is the staff trained or certified?

The city contracts a licensed Doctor of Veterinary Medicine who provides euthanasia training for shelter staff. Staff also receives training through AHA and NACA certification programs.

Does your state certify euthanasia technicians?

No

Attachments

Title	File Name
Current Year Budget	<u>Wichita Animal Shelter Budget & Financial (Current) 2009.pdf</u>
Photograph	<u>2 Grand Opening.JPG</u>
Photograph	<u>3 Front of Animal Care Campus.JPG</u>
Photograph	<u>4 Courtyard .JPG</u>
Photograph	<u>8 Customer Service Lobby.JPG</u>
Photograph	<u>12 Public Access to Kennels.JPG</u>
Photograph	<u>15 Outdoor Accessibility Long Term Hold 1.JPG</u>
Photograph	<u>17 Sally Port (Offloading from field).JPG</u>
Photograph	<u>19 Receiving from Field (located in Sally Port).JPG</u>
Photograph	<u>20 Triage Room (Receiving from Field).JPG</u>
Photograph	<u>21 Sick & Injured Ward.JPG</u>
Photograph	<u>4 Wichita Animal Shelter.JPG</u>

Files attached to this form may be deleted 120 days after submission.

TO: Kay Johnson, Environmental Services Director
FROM: Don Henry, Environmental Services Manager
SUBJECT: Animal Services - ASPCA Grant for computer equipment

DATE: November 24, 2009


Environmental Services would like to confirm approval to apply for an American Society for the Prevention of Cruelty to Animals (ASPCA) grant in the amount of \$3,500. These funds would be used to purchase a computer for a workstation to be located in the receiving bay where animals are brought into the shelter by field officers. The funds would also cover the cost of IT charges through the end of 2010. About \$150 would be expended out of the animal services donation fund to cover the entire amount of fees in 2010. Beginning in 2011 at least \$1,872 would be needed to be added to the section's budget to fund ongoing IT network charges for the computer. This memo is to request City Manager approval for advanced submittal prior to City Council approval as allowed by AR 2.4 where delay would disqualify the grant. The deadline for submittal to ASPCA is December 1, 2009. This grant application will be scheduled for Council approval on the next available Council meeting. A copy of the electronic application is attached.

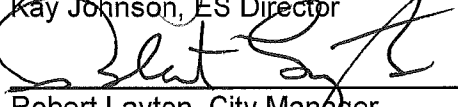
ASPCA grants provide support to a variety of animal welfare organizations including cash awards to municipal animal shelters for enhancing outreach and services to the communities they serve. The grant funds being applied for would be used to purchase computer equipment to enhance tracking and disposition of animals in the shelter brought in by field officers. This work station could also be used for transferring animals to the Kansas Humane Society for adoption. Currently, animals brought in by field officers have to be entered into computers located at the front customer service counter. KHS transfers are also performed in the customer service area. This new computer would support services geared towards maximizing the number of animals released back to their owners or provided for adoption to the public through KHS. The computer workstation would be located in an area of the shelter accessible to field officers and KHS adoption staff in order to further reduce customer service bottlenecks and waiting time for citizens at the shelter.

The maximum amount of funds available to the city will be \$3,500. There is no additional monetary cost to the city associated with the initial purchase of this equipment. City IT fees (less \$150 will be paid from the city shelter donation fund) would be covered by the grant until the end of 2010. Beginning in 2011 the department would require \$1,872 annually from the general fund for ongoing IT network charges (at the current rate).

The application for this grant money is due to be submitted to the ASPCA on December 1, 2009.

Approved:



Kay Johnson, ES Director


Robert Layton, City Manager

11/24/2009
Date

12-2-09
Date

Cc: Chris Carrier, Public Works Director

**CITY OF WICHITA
City Council Meeting
December 15, 2009**

TO: Mayor and City Council Members

SUBJECT: Payment of Condemnation Award to Acquire Property for the Construction of the 9th Street Drainage Outfall Project (District VI)

INITIATED BY: Law Department

AGENDA: Consent

Recommendation: Authorize payment of the appraisers' award.

Background: The 9th Street Drainage Outfall project will provide additional storm water drainage for the area bounded by West Street, Central, 13th Street and McLean. The project requires the acquisition of easements from 10 tracts. A north-south easement is necessary between the properties at 3432 West 8th and 3426 West 8th. The two properties are in under the same ownership. The property at 3432 West 8th is improved as a single-family residence and 3426 is an adjacent vacant lot. Together, the sites consist of 37,697 square feet and each is zoned residential. It is necessary to obtain a 3,783 square foot permanent easement and a 3,938 square foot temporary construction easement. General landscaping, fencing, a gravel driveway, and trees are impacted as a result of the project. On July 7, 2009, the Council authorized the acquisition of these easements. The court appointed appraisers filed a report determining the value of this tract of land. The award is \$13,100. The related appraiser fees total \$3,000. Court costs are an additional \$168.

Analysis: In order for the City to obtain title to this property, it must pay the amount of the award, together with appraisers' fees, into the Clerk of the District Court on or before December 24, 2009. Acquisition of these tracts is necessary in order to secure use of the land to provide sanitary sewer service to the area.

Goal Impact: This expenditure supports the efficient infrastructure goal.

Financial Considerations: The cost of acquiring this property will be paid from General Obligation Bonds. Failure to pay the award by the date ordered by the Court would be deemed an abandonment of the award, and subject the City to an award for the same sum in fees and to the court, plus the owner's expenses in defending the action. The appraisers' award of \$13,100 and the related appraiser fees of \$3,000 make the total award for this portion of the 9th Street Drainage Outfall Project \$16,100.

Legal Considerations: In order acquire the property, it is necessary to authorize payment of the award, together with the fees, to the Clerk of the District Court on or before the last City Council meeting of 2009.

Recommendations/Actions: It is recommended that the City Council authorize payment to the Clerk of the District Court of the 9th Street Drainage Outfall Project appraisers' award in the amount of \$13,100, together with the related appraiser fees of \$3,000 and court costs of \$168 for a total of \$16,268 as per the journal entry, for acquisition of this property.

Attachments: None.

City of Wichita
City Council Meeting
December 15, 2009

TO: Mayor and City Council

SUBJECT: Public Restrooms near the East Bank of the Little Arkansas River, south of Central (District VI)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the completion of design and accept easement.

Background: Local public interest, as well as tourism, have substantially increased pedestrian traffic surrounding the Keeper of the Plains and the pedestrian bridges since their opening in May 2007. As a result, the need for public restrooms in the area has become apparent. The closest location with reasonable access to a sanitary sewer and outside the foot print of any future museum parking was determined to be on adjacent property owned by Westar. The proposed location is just east of the east pedestrian bridge landing crossing the Little Arkansas River. The facility would also serve the adjacent bike paths.

Analysis: The building would be located on Westar Property. The required permanent easement has been signed by Westar granting the City of Wichita the ability to site a future restroom at this location.

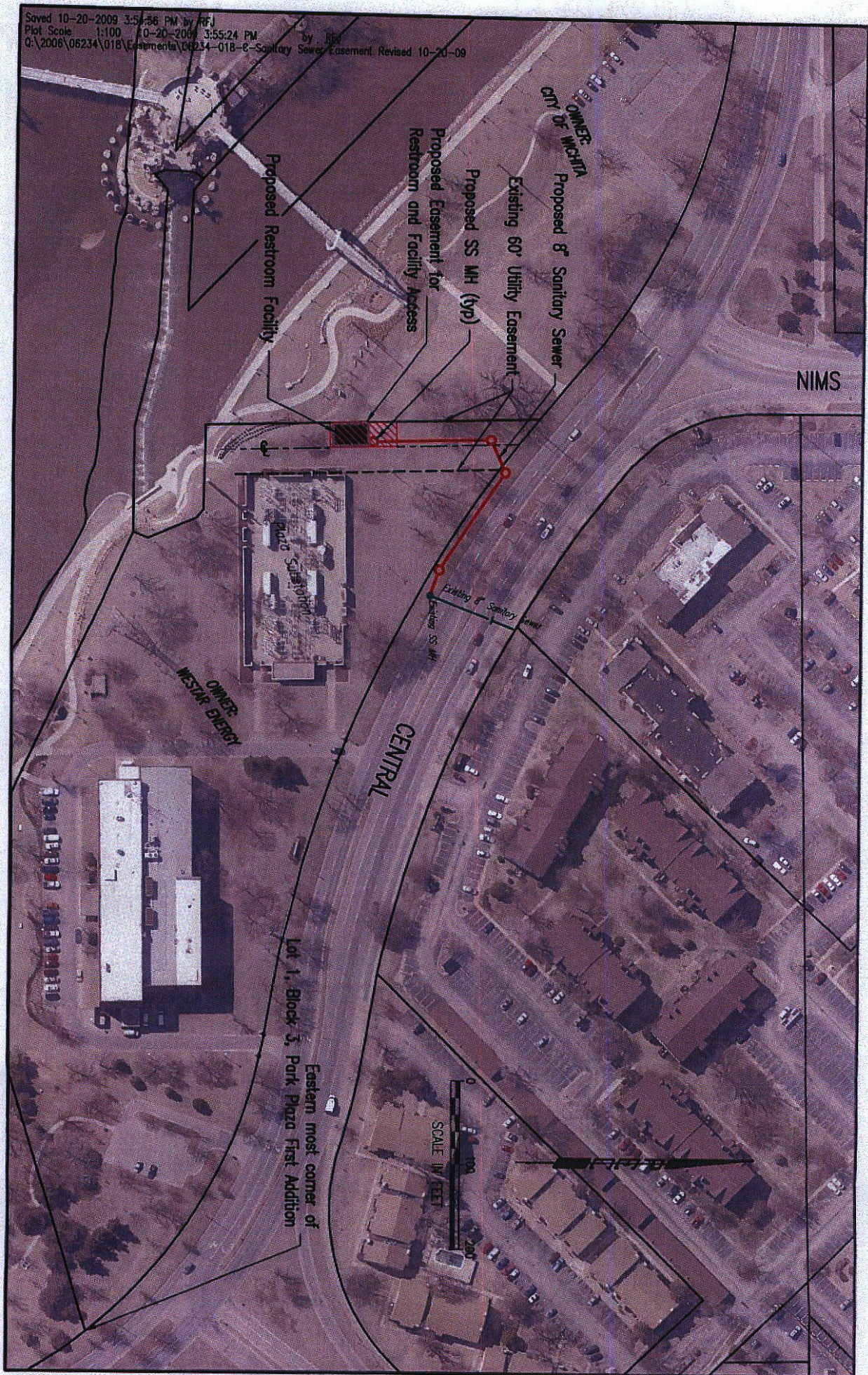
Financial Considerations: The existing on call design agreement provides for payments totaling \$20,193. An additional \$8,170 is needed to complete construction plans for a design cost of \$28,363. Funding is available in the River Corridor Improvement budget. The project will be returned to the City Council at a future date for consideration of construction funding.

Goal Impact: This project addresses the Efficient Infrastructure and Quality of Life goals by providing public restrooms in the River Corridor.

Legal Considerations: The easement has been approved as to form by the Department of Law. The on call agreement has a \$25,000 limit per project unless approved by the City Council.

Recommendation/Action: It is recommended that the City Council authorize payment for design services to complete construction plans, accept the easement and authorize the necessary signatures.

Attachments: Map and easement.



PERMANT EASEMENT

THIS EASEMENT made this 9th day of November, 2009 by and between the Kansas Gas and Electric Company, a Kansas corporation, or its assigns, ("Grantor"), and the City of Wichita, Kansas, a municipal corporation, or its assigns, ("Grantee").

WITNESSETH: That the Grantor, in consideration of the sum of One Dollar (\$1.00) and other good and valuable considerations, the receipt whereof is hereby acknowledged, do hereby grant and convey unto the said Grantee a perpetual easement for the purpose of constructing, maintaining, and repairing a public restroom facility, over, along, under and on the following described real estate situated in Sedgwick, County, Kansas, to wit:

COMMENCING at the eastern most corner of Lot 1, Block 3, Park Plaza First Addition, Wichita, Sedgwick County, Kansas; Thence northwesterly along the northerly line of said Lot 1 being a curve to the left, having a radius of 576.62 feet, a chord bearing of N59°57'08"W, a chord distance of 403.83 feet and through a central angle of 40°59'43", an arc distance of 412.57 feet to the PC of a curve to the right; Thence continuing along the northerly line of said Lot 1, being a curve to the right, having a radius of 1,492.39 feet, a chord bearing of N65°05'44"W, a chord distance of 790.34 feet and through a central angle of 30°42'32", an arc distance of 799.88 feet to the west line of a platted 60' Utility Easement; Thence Bearing S00°11'12"W, along the west line of said platted Utility Easement, a distance of 199.56 feet to the **POINT OF BEGINNING**; Thence continuing Bearing S00°11'12"W, along the west line of said platted Utility Easement, a distance of 79.00 feet; Thence Bearing S89°48'48"E, a distance of 30.00 feet to the centerline of said platted Utility Easement; Thence Bearing N00°11'12"E, along said centerline, a distance of 79.00 feet; Thence Bearing N89°48'48"W, a distance of 30.00 feet to the **POINT OF BEGINNING**.
(containing 0.054 acres, more or less)

Grantee is hereby granted the right to enter upon said premises at any time for the purpose of constructing and maintaining a permanent structure to be used for a public restroom for so long as the improvement is maintained and operated by the Grantee, its designees or its assigns. If said public use ceases for a period of twelve months, this easement shall terminate.

Grantee hereby agrees that at the conclusion of construction activity to public restroom improvement, any damage to the surface area shall be repaired by Grantee, its designees or its assigns.

TO HAVE AND TO HOLD THE SAME, together with all and singular tenements, hereditaments, and appurtenances thereto belonging or in any wise appertaining, forever; and Grantor, for itself, its successors, and assigns, does hereby covenant, promise and agree to

warrant and defend title to the Property unto Grantee, against the lawful claims and demands of all persons claiming under the Grantor, except for:


Easements and Restrictions of record, if any, recorded with the Sedgwick County Register of Deeds.

IN WITNESS WHEREOF: The Grantor has caused this easement and indenture to be signed on its behalf by its Vice President, thereunto duly authorized so to do, and to be attested by its Secretary, and has caused its corporate seal to be hereunto affixed as of the date first written above.

KANSAS GAS AND ELECTRIC COMPANY, A KANSAS CORPORATION:

Kelly B. Harrison
Kelly B. Harrison

ATTEST:


Larry D. Irick

CORPORATE ACKNOWLEDGMENT

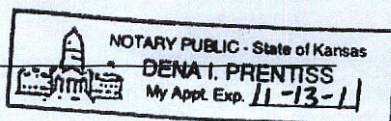
STATE OF KANSAS)
) SS:
COUNTY OF SHAWNEE)

On this 9th day of November, 2009, before me, a Notary Public in and for said County and State aforesaid, personally appeared Kelly B. Harrison and Larry D. Irick, to me personally known, being by me duly sworn, did say that the said Kelly B. Harrison is the Vice President, and said Larry D. Irick, is the Secretary of Kansas Gas and Electric Company, the corporation that executed the foregoing instrument, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed, sealed and delivered in the name and on behalf of said corporation by authority of its Board of Directors, and said Kelly B. Harrison and Larry D. Irick acknowledge said instrument to be the free and voluntary act and deed of said corporation.

WITNESS my hand and seal the day and year last above written.

Deena A. Hunter
Notary Public

My appointment expires:



City of Wichita
City Council Meeting
December 15, 2009

TO: Mayor and City Council

SUBJECT: 2010 Insurance Program

INITIATED BY: Department of Finance

AGENDA: Consent

Recommendation: Receive, file and ratify the report and approve the contract amendment.

Background: Annually, the City places a number of insurance policies to provide coverage for risks to the City of Wichita, its assets and employees. These policies include property, data processing, boiler/machinery, burglary/theft, employee dishonesty, excess workers compensation liability, airport general liability, underground fuel storage, helicopter hull and helicopter general liability, fine arts, travel insurance, foreign travel and Wichita Public Building Commission (PBC). In addition, to administer the Risk Management program, various services are contracted including outside appraisal services, software support, medical bill review, and nurse case management for workers compensation, vehicle rental services for private claimants, and several medical service providers for workers compensation.

Analysis: To protect City assets, reduce the risk exposure and administer the Risk Management program, the City has placed the following insurance coverage and maintains the following contracts. The cost of these insurance policies is included in the Comprehensive Annual Financial Report. The 2010 insurance program is as follows:

Purchased Insurance

Property Insurance - All City owned buildings (approximately 250) and contents are covered against named perils. The total insurance value is in excess of \$657 million and is placed with Travelers Indemnity Insurance Company. The premium is \$690,000 annually with a \$2 million dollar deductible per occurrence for wind and hail only. All other policy deductibles are \$100,000 or less. The Travelers Property and Casualty Company of America quote is the lowest quote for this coverage and represents an 18% increase over the current rate. Though minimally influenced by an increase in property values and properties acquired during the policy period, the majority of the increase in premium was due to the July 8, 2009 hail storm and the City's geographical location in relation to wind and hail storms. The \$2 million wind hail deductible represents a \$1 million increase over that of 2009. The City maintains a separate policy for property, liability and boiler insurance on behalf of the Public Building Commission on the State Office Building. Property coverage limits are \$34.5 million, with an additional \$4 million in business interruption insurance. In addition, the Public Building Commission policy also includes general liability coverage of \$2 million. These coverages are placed with Travelers Insurance Company with premiums totaling \$48,338, a .99% reduction in premium cost for 2010.

Worker's Compensation Insurance (Excess Coverage) - The City self-insures exposure to Worker's Compensation costs, as permitted under KSA 44-505(f). However, the City does purchase excess worker's compensation coverage (as required for self-insured's by KAR 51-14-4) with retention of \$750,000 per occurrence. The 2010 premium rate decreased 1.19% from that of 2009, allowing the City to lock in a two year rate. Anticipated premium based on 2009 audited payroll is estimated at \$178,765. This insurance is placed with Safety National Casualty Insurance Company.

Crime (Burglary/Theft) Policy - This policy covers losses due to employee theft, other theft or robbery, forgery of documents, computer fraud (fraudulent transfers of funds) and acceptance of counterfeit currency or money orders. Depending on the type of loss, policy limits range from \$500,000 to \$1 million. The premium cost is \$10,498 for one year and the policy is placed with Hartford Fire Insurance Company. Premium rates are equal to those paid in 2009.

Travel Accident Insurance - This policy provides insurance against the loss of life or limb of City employees and elected officials while traveling outside of the City, but within the United States. Class I employees (City Manager and City Council) are covered for travel anywhere in the world. Class II employees (all other City employees) are covered for bona fide business travel anywhere in the world while on official City business. The aggregate policy limit is \$500,000, with the loss per individual limited to \$100,000. If more than 5 individuals were subject to the aggregate limit, *the policy limit would be split proportionately among the claimants*. The premium cost is \$1,700 annually. The premium for the 2010 policy remains the same as 2009—no increase. The policy is placed with Zurich American Insurance Company.

International Package - This policy, written through ACE American Insurance Company, provides for coverage to include \$1 million general and automobile liability limits, \$1 million for repatriation, \$250,000 limits for accidental death and dismemberment, \$5,000 limits for employee dishonesty and money & securities, and an aggregate of \$1,000,000 for kidnap and extortion. Changes in the 2010 policy include kidnap and extortion coverage to include Sister Cities. The 2010 premium for this policy is \$4,941, a \$2,441 dollar increase from 2009.

Helicopter Liability - The City maintains liability and hull insurance on the MD 500E helicopter operated by the Police Department. The policy for 2010 written through Phoenix-Old Republic Insurance contains limits of \$1.2 million for damage to the hull, liability at \$1 million and medical payment per occurrence at \$12,000. Premiums for 2010 totaling \$29,800, decreased by 30% over those paid in 2009.

Art Collection - The Wichita Art Museum maintains coverage on the fine arts collections. This policy provides \$75 million in coverage for art within the Museum, as well as \$37,500 million for art in transit or at other locations. The coverage amount is less than the total estimated \$162,665,642 million appraised value of the collection. However, the insurance coverage is based on a “Probable Maximum Loss” study performed by Huntington Block Insurance for fire and tornadoes that may affect the Wichita Art Museum. The study is based on the fact that not more than 2/3 of the art collection (or less) is actually displayed at any given time. The rest of the art collection is stored in a hardened vault and is protected from loss. Huntington Block performed an on-site review of the Wichita Art Museum in 2008 to re-verify insurance coverage levels. Huntington Block’s review indicates that \$75 million dollars in coverage is adequate and appropriate.

The policy is placed with 50% - 50% with ACE American Insurance Company and AXA Art Insurance Corporation. The 2010 premium totaling \$30,000 remains flat with no increase over the 2009 premium.

Airport General Liability - The Airport maintains \$100 million in general liability insurance coverage with a \$1,000 deductible per occurrence. The policy is written through Chartis (AIG) Aviation with an annual premium of \$44,500, a 29% reduction over the 2009 premium of \$62,716.

Airport Underground Storage Tanks - The Airport maintains environmental liability insurance on 24 underground storage tanks at the airport. Liability limits are \$1 million per incident. The annual premium is \$3,754 and placed through Great American Alliance Insurance company. This insurance protects against environmental loss only. In the event of an accidental property loss, coverage would be afforded through the City’s Property and Casualty insurance policy. There is no increase in the 2010 premium.

Federal Excess Liability - The City purchased a Federal Excess Liability insurance policy in June of 2007. This coverage does not cover the misuse of federal funds. The coverage applies to Federal lawsuits where the Kansas Tort Claims Act does not protect the City of Wichita. This coverage is often maintained in cities similar in size to Wichita to serve as a backstop for significantly high cost liability exposures. Some of these exposures include, but are not limited to: civil rights violations, discrimination, other federal actions and liability coverage for City vehicles when traveling outside the State of Kansas. Coverage consists of a \$10 million limit with a \$2,000,000 retention. This policy is written by AIG and the annual premium for 2010 remains flat at \$251,920.

Self Insured Risks

The City self-insures for general liability using a Tort Fund administered by the Department of Law. Funding for the Tort Fund is provided through the general fund and water and sewer funds. Automobile liability is self-insured by the City, as is workers compensation (other than the excess coverage noted above).

Contracts

The City currently utilizes Via Christi/Riverside to provide comprehensive pre-employment physicals and AMS Laboratory for drug tests on all potential employees. PRISM Occupational Health Network provides primary medical treatment for employees injured on the job. Corvel services are used for worker's compensation claims that require nurse case management and to re-price billings when utilization is through the provider's network. The nurse management contract is based on an hourly rate basis.

For re-pricing Worker's Compensation medical bills, the City pays Corvel 25% of the savings plus \$1.25 per line fee.

Heartland MRI is used for all imaging services required for diagnosis of work related injuries. The negotiated fee for these services is from \$436 to \$530 per MRI, including the read. This reflects an approximate 50% savings over the State of Kansas mandated fee schedule for these services. Other MRI vendors may be used, but only if dictated by medical necessity. All required physical therapy for work related injuries is provided by TheraCare on a negotiated fee structure of 75% of the state mandated fee schedule. Competitive Request for Proposals (RFP) was issued for these services in 2008 for services to be provided in 2010.

Auto Damage Appraisers of Kansas provides damage estimates on private claimant's cars and vehicles and salvage valuations on all total losses. The City has also negotiated a rate of \$26.00 per day with Enterprise Rent-A-Car when the City is required to provide substitute transportation while a private claimant's vehicle is being repaired.

The self-insured worker's compensation and automobile physical damage programs utilize Risk Master World software to log claims, initiate payments and prepare reports. The annual support software fee to CSC Financial Services Group is \$18,190.34. An actuarial review of the Self Insurance Fund reserves is conducted annually. The current provider is Pinnacle Actuarial Resources, Inc, at an annual amount of \$7,500. Competitive selection for actuarial services beginning in 2010 is currently underway.

On December 7, 2004, the City Council approved a contract for insurance placement services for property and casualty insurance with Marsh, USA. The City opted to renew Marsh, USA's contract option for placement of all applicable 2010 insurance policies. Competitive selection for insurance placement services is currently underway for placement of all 2011 insurance policies and related services.

Financial Considerations: The premiums for the insurance policies and related programs and services are included in the adopted budget. Several premium costs are re-allocated to Departments through the establishment of auto liability, building and contents, and worker's compensation insurance rates. Coverage for the Police helicopter is budgeted and expended in the Police General Fund budget. Airport

specific coverages are budgeted and expended in the Airport Fund. The Art Museum coverage is budgeted for insurance in their 2010 operating budget. Funding for the travel accident insurance and the crime policy is absorbed within the Self Insurance Fund. Though several programs enjoyed a rate decrease, the total cost of premiums increased by 7%. The majority of this increase can be attributed to property insurance and the market's response to the City's wind and hail exposure.

Goal Impact: The City places a number of insurance policies and contracts to provide coverage for risk to the City of Wichita and its employees as a part of the Internal Perspective goal. These policies include property, data processing, boiler/machinery, burglary/theft, employee dishonesty, excess worker's compensation liability, airport general liability, underground fuel storage, helicopter hull, helicopter general liability and federal excess liability. The insurance policies and contracts protect City assets and reduce/avoid costs.

Legal Considerations: The City's liability on tort claims is limited under KSA 75-6105 to \$500,000 per claim. The City is allowed to self-insure workers compensation based on KSA 505(f), although excess workers compensation coverage is required under KAR 51-14-4. City Code 2.64.020 (h) authorizes the Purchasing Manager to negotiate the purchase of insurance coverage.

Recommendation/Action: It is recommended the City Council receive, file and ratify the 2010 Insurance Program, subject to minor modifications and verification of coverage details.

City of Wichita
City Council Meeting
December 15, 2009

TO: Mayor and City Council

SUBJECT: Equus Beds Funding - Memorandum of Understanding with the Kansas Water Office

INITIATED BY: Water Utilities

AGENDA: Consent

Recommendation: Approve the Memorandum of Understanding (MOU) for Addendum No. 1 with the Kansas Water Office for funding the Equus Beds Aquifer Storage and Recovery (ASR) project.

Background: On October 3, 2000, the City Council authorized projects to begin the development of new water supplies for the City. The projects will develop water supplies for the City's needs through the year 2050. On July 10, 2007, the City Council approved and instructed staff to proceed with the projects required for Phase II of the Equus Beds ASR. Obtaining state funding for the project was one of the legislative priorities established by the City Council in 2008. On March 10 and March 19, 2009, the original Grant Agreement for Kansas Water Plan Funding of the Equus Beds ASR in the Lower Arkansas Basin was executed.

Analysis: During the 2008 legislative session, the Kansas State Legislature passed legislation providing \$1,000,000 in funding for the City of Wichita's ASR project for the year. The legislature approved \$1,000,000 with an expectation that future funding would be considered during the span of Phase II of the project, perhaps for the next seven years. Administration of the funding will be handled by the Kansas Water Office.

To facilitate receiving these funds for the construction costs of the ASR project, an MOU has been prepared between the City and the Kansas Water Office. The MOU describes the parts of the project eligible for funding and how the City will invoice the Kansas Water Office for expenditures. The MOU will remain in effect as long as state funding is available, including funds currently allocated and any future allocations.

Financial Considerations: The cost for Phase II of the ASR project is estimated to exceed \$200 million, and the state has currently appropriated \$1,000,000 towards the project. Though not a large contribution, it represents state participation in this significant water resource development project. Addendum No. 1 adds an amount not to exceed \$300,000 for implementing, or furthering the project in 2010. Funding has been approved in W-549, Water Supply Plan, which is dedicated to new water supply development.

Goal Impact: The project will help to ensure efficient infrastructure by assisting in the development of water supplies.

Legal Considerations: The Law Department has reviewed Addendum No. 1 and has approved it as to form.

Recommended Action: It is recommended that the City Council approve Addendum No. 1 with the Kansas Water Office and authorize the necessary signatures.

Attachments: Addendum No. 1 with the Kansas Water Office for the ASR project.

**Addendum Number One
to
The Original Grant Agreement
Kansas State Water Plan Funding of
Equus Beds Aquifer Storage and Recovery Project(s)
in the Lower Arkansas River Basin**

This Addendum to the Original Grant Agreement for Kansas State Water Plan Funding of the Equus Beds Aquifer Storage and Recovery Projects(s) in the Lower Arkansas Basin (herein after "Addendum") adds to the original agreement between the Kansas Water Office (hereinafter "KWO,") and the City of Wichita, Kansas, as originally executed on March 10, 2009 and March 19, 2009 by and between the parties..

The parties agree to the following Addendum to Paragraph III in the original agreement entitled "PAYMENTS and that no other amendments, changes, modification or alterations of the original agreement are made or contemplated by the execution of this Addendum:

The parties agree that Paragraph III is modified by adding the following funding from the State of Kansas, through the State Water Plan, for Kansas Fiscal Year 2010 in an amount not to exceed Three Hundred Thousand and No/100 dollars (\$300,000.00) in United States currency, for implementing or furthering the project(s) discussed in the original agreement between the parties.

In agreement to the terms of this Addendum, we set our hand the date we have executed this Addendum, under the authority and power granted to us by virtue of our position or office.

For the Kansas Water Office

For the City of Wichita

Tracy Streeter
Director, Kansas Water Office

Carl Brewer
Mayor

Date_____

Date_____

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City of Wichita
City Council Meeting
December 15, 2009

TO: Mayor and City Council

SUBJECT: Pressure and Chlorine Booster Station - Rural Water District No. 1 (District II)

INITIATED BY: Water Utilities

AGENDA: Consent

Recommendation: Authorize staff to proceed with a project to construct a pressure and chlorine booster station to serve Rural Water District No. 1 of Sedgwick County (RWD1).

Background: Water Utilities has provided potable water to RWD1 via a wholesale agreement since 1969. The agreement expired in April, 2009, and a new Wholesale Water Sales Agreement with RWD1 and Resolution were approved by the City Council on October 20, 2009, to initiate this CIP project.

Analysis: RWD1 has a service area that abuts the Wichita corporate limits and municipal growth area in the northeast part of the City. Because RWD1 is connected at the outer limits of Water Utilities distribution system, RWD1 may experience lower than desired water pressure and chlorine levels throughout their system. For RWD1's customers to receive more reliable service and properly disinfected water, RWD1 requested that Water Utilities construct a chlorine and pressure booster station at a location to be determined by an engineering pre-design study. Under the new agreement, Water Utilities and RWD1 will equally share in the total costs of this project. In exchange for Water Utilities' participation in the cost of the project, RWD1 has released to Wichita all RWD1 certified service area south of 45th Street North and west of one-half mile line between Greenwich Road and 127th Street East. Upon completion of the facility it will be owned, operated and maintained by RWD1.

Financial Considerations: Design and construction of the new pressure and chlorine booster station is estimated to cost between \$450,000 and \$600,000. RWD1 will pay half of the cost through monthly billings from Water Utilities over the life of the Agreement. Funds for the project are included in the Proposed CIP for 2009-2018. The project will be funded from Water Utility revenues, reserves, and/or a future revenue bond issue.

Legal Considerations: The City's Administrative Regulations require that a project with a cost in excess of \$25,000 be approved by the City Council in order to initiate the project.

Recommendations/Actions: It is recommended that the City Council: 1) authorize staff to proceed with the design and construction of the pressure and chlorine booster station; and 2) authorize the necessary signatures.

Attachments: There are no attachments.

**City of Wichita
City Council Meeting
December 15, 2009**

TO: Mayor and City Council

SUBJECT: Budget Adjustment – Fleet Fund (All Districts)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendations: Approve the budget transfers.

Background: The Fleet Division is responsible for the operation and maintenance of over 2,400 automobiles, light trucks, heavy trucks, heavy equipment, and light equipment used by City departments. Fleet does not provide vehicles or service for Wichita Transit's large buses, or for Airport equipment. Internal customers pay rent on vehicles and equipment to offset the operation, maintenance and future replacement costs. Services include preventive maintenance, repairs, tire service, mobile service, fueling, towing, body shop, and major mechanical repairs. Major repairs for specialized heavy equipment are managed contractually with local businesses.

Analysis: There are three budget issues to be addressed. In 2009, for the first time, Police patrol cars were purchased with extended power train warranties. Fleet staff is monitoring these warranties to determine their cost-effectiveness for City operations. Total warranty purchase costs were \$115,555. The second issue is the use of temporary help. Fleet has had a significant number of positions vacancies in 2009, and to support customer departments has made limited use of temporary staffing. Additional temporary help costs total \$35,000. Finally, in 2005, General Fund monies were transferred to the Fleet Fund to make up for increasing fuel costs incurred in the course of General Fund operations. Due to falling fuel costs from 2008 to 2009, and the implementation of internal cost reductions, the Fleet Fund is in a position to repay the General Fund. Including interest, the total repayment will be \$541,000.

Financial Considerations: The 2009 Revised Budget for the Fleet Fund is approximately \$11.9 million. Personnel and materials costs are expected to be under expended by at least \$700,000. The following table summarizes the sources and uses of funds:

Uses:	Extended warranties for patrol cars	\$115,555
	Temporary help	\$35,000
	Repayment to General Fund	\$541,000
Sources:	Savings in personnel and materials	<u>(\$691,555)</u>
Net increase/decrease:		\$0

Goal Impact: Cost controls and reductions support the Internal Perspective.

Legal Considerations: Council approval is required for budget adjustments over \$25,000.

Recommendations/Actions: It is recommended that the City Council approve the budget transfers.

Attachments: None.

Second Reading Ordinances for December 15, 2009 (first read on December 8, 2009)

Public Hearing and Issuance of Industrial Revenue Bonds, The Coleman Company. (District 1)

ORDINANCE NO. 48-575

An Ordinance authorizing the city of Wichita, Kansas, to issue its taxable industrial revenue Bonds, Series IV, 2009 (The Coleman Company, Inc.), in the aggregate principal amount of not to exceed \$5,300,000 for the purpose of providing funds to acquire, construct and equip improvements to existing facilities located in the city of Maize, Kansas, and the City of Wichita, Kansas; prescribing the form and authorizing execution of a fifteenth supplemental trust indenture by and between the city and The Bank of New York Mellon Trust Company, N.A., as trustee, with respect to the bonds; prescribing the form and authorizing execution of a fifteenth supplemental lease agreement by and between the City and the Coleman Company, Inc.; approving the form of a guaranty agreement; authorizing the execution of a bond purchase agreement by and between the city and the Coleman Company, Inc., as purchaser of the bonds; and authorizing execution of a bill of sale.

Public Hearing and Issuance of Industrial Revenue Bonds, Cessna Aircraft Company. (Districts III and IV)

ORDINANCE NO. 48-576

An Ordinance authorizing the city of Wichita, Kansas, to issue its taxable industrial revenue bonds, series viii, 2009 (Cessna Aircraft Company), in the original aggregate principal amount of not to exceed \$45,000,000 for the purpose of purchasing, acquiring, renovating, equipping, constructing and/or installing an industrial and commercial facility; authorizing execution of an nineteenth supplemental trust indenture by and between the city and The Bank of New York Mellon Trust Company, N.A., St. Louis, Missouri, as trustee with respect to the Series VIII, 2009 bonds; authorizing the city to lease said project to Cessna Aircraft Company; authorizing the execution of an nineteenth supplemental lease by and between the city and Cessna Aircraft Company; authorizing the execution of a bond purchase agreement by and between the city and Cessna Aircraft Company, as purchaser of the bonds; and authorizing execution of a bill of sale, termination and release of ninth supplemental lease and cancellation, discharge and release of ninth supplemental trust indenture.

Public Hearing and Issuance of Industrial Revenue Bonds, Bombardier Learjet. (Districts IV and V)

ORDINANCE NO. 48-577

An Ordinance authorizing the city of Wichita, Kansas, to issue its taxable Industrial Revenue Bonds in the original aggregate principal amount not to exceed \$4,900,000 for the purpose of providing funds to finance the installation of improvements to certain existing aviation manufacturing and flight testing facilities as well as to finance the acquisition of certain machinery and equipment for such facilities located in the city of Wichita, Kansas; prescribing the form and authorizing execution of a sixteenth supplemental trust indenture by and between the city and The Bank of New York Mellon Trust Company, N.A., St. Louis, Missouri (the “trustee”), as trustee with respect to the bonds; prescribing the form and authorizing the execution of a sixteenth supplemental lease by and between Learjet Inc. and the city; approving the form of a guaranty agreement; and authorizing the execution of a bond purchase agreement by and between the city and Learjet inc., as purchaser of the bonds.

Year-end Salary and Classification Ordinances.

ORDINANCE NO. 48-567

Non-exempt Salary

An ordinance providing for a uniform schedule of standard pay ranges for non-exempt employees of the city of Wichita, repealing Ordinance No. 48-178

SUB 2009-22 – Plat of Maize 54 Addition, located on the north side of Kellogg Drive and east of Maize Road.

ORDINANCE NO. 48-569

An ordinance changing the zoning classifications or districts of certain lands located in the city of Wichita, Kansas, under the authority granted by the Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by section 28.04.010, as amended.

Nuisance Abatement Assessments.

ORDINANCE NO. 48-570

An Ordinance making a special assessment to pay for the cost of cutting weeds in the city of Wichita, Kansas.

ORDINANCE NO. 48-571

An Ordinance making a special assessment to pay for the cost of abating certain public health nuisances (lot clean up) under the provision of section 7.40.050 of the code of the city of Wichita, Kansas.

ARRA Street Maintenance Projects. (Districts 1 and VI)

ORDINANCE NO. 48-572

An ordinance amending ordinance no. 48-440 of the city of Wichita, Kansas declaring Broadway, between Central and 12th Street (472-84845) to be a main trafficway within the city of Wichita Kansas; declaring the necessity of and authorizing certain improvements to said main trafficway; and setting forth the nature of said improvements, the estimated costs thereof, and the manner of payment of the same.

ORDINANCE NO. 48-573

An ordinance amending ordinance no. 48-545 of the city of Wichita, Kansas declaring Washington, between 1st street and Central (472-84846) to be a main trafficway within the city of Wichita Kansas; declaring the necessity of and authorizing certain improvements to said main trafficway; and setting forth the nature of said improvements, the estimated costs thereof, and the manner of payment of the same.

ORDINANCE NO. 48-574

An Ordinance amending ordinance no. 48-546 of the city of Wichita, Kansas declaring Hillside, between 9th street and 12th street (472-84847) to be a main trafficway within the city of Wichita Kansas; declaring the necessity of and authorizing certain improvements to said main trafficway; and setting forth the nature of said improvements, the estimated costs thereof, and the manner of payment of the same.